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Los Angeles Regional Water Quality Control Board

January 15, 2016

VIA EMAIL ONLY

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PETITION OF NATURAL RESOURCES DEFENSE COUNCIL, LOS ANGELES WATERKEEPER, AND HEAL THE BAY FOR REVIEW OF APPROVAL OF WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD ORDER R4-2012-0175: LOS ANGELES WATER BOARD RESPONSE TO PETITION AND ADDENDUM
SWRCB/OCC FILE A-2386

Dear Mr. Mallory-Jones:

Please find enclosed the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) response to Natural Resources Defense Council, Los Angeles Waterkeeper, and Heal the Bay's: 1) Petition for Review of Los Angeles Water Board's Executive Officer's Action to Conditionally Approve Nine Watershed Management Programs (WMPs) Pursuant to the Los Angeles County MS4 Permit (Petition), and 2) Addendum for Petition for Review of Los Angeles Water Board's Executive Officer's Action to Conditionally Approve Nine WMPs Pursuant to the Los Angeles County MS4 Permit (Addendum).

The Los Angeles Water Board is also concurrently filing a separate request for the State Water Resources Control Board (State Water Board) to take official notice of or to accept as supplemental evidence certain documents.

We look forward to the State Water Board's review of the administrative record and the Los Angeles Water Board's response to the Petition and Addendum. If you have any questions, please contact me at Samuel.Unger@waterboards.ca.gov, Renee Purdy at Renee.Purdy@waterboards.ca.gov, or Jennifer Fordyce at Jennifer.Fordyce@waterboards.ca.gov.

Sincerely,


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LOS ANGELES WATER BOARD'S RESPONSE TO NATURAL RESOURCES DEFENSE COUNCIL, LOS ANGELES WATERKEEPER, AND HEAL THE BAY'S: 1) PETITION FOR REVIEW OF LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD EXECUTIVE OFFICER'S ACTION TO CONDITIONALLY APPROVE NINE WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES COUNTY MS4 PERMIT, AND 2) ADDENDUM FOR PETITION FOR REVIEW OF LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD EXECUTIVE OFFICER'S ACTION TO CONDITIONALLY APPROVE NINE WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES COUNTY MS4 PERMIT

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I. INTRODUCTION

As the State Water Resources Control Board (State Water Board) is aware from prior proceedings, Part VI.C of Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) Order No. R4-2012-0175, *Waste Discharge Requirements for MS4 Discharges within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4* (Los Angeles County MS4 Permit or Permit) provides Permittees with an alternative compliance option by developing and implementing Watershed Management Programs (WMPs).¹ The Permit contains detailed requirements regarding the elements of WMPs and deadlines for the development, review, and approval of these programs. Pursuant to the Permit, the Los Angeles Water Board, or the Board's Executive Officer on behalf of the Board, was required to approve or deny final WMPs within 3 months of submittal of the final WMPs. Part VI.C.4.e of the Permit specifies that Permittees that do not have an approved WMP within 28 months of the Permit's effective date (thus, by April 28, 2015) shall be subject to the baseline requirements of the Permit and shall demonstrate compliance with receiving water limitations pursuant to Part V.A and applicable interim water quality-based effluent limitations pursuant to Parts VI.E.2.d.i.(1)-(3).

In Order WQ 2015-0075, the State Water Board upheld the WMP provisions in the Los Angeles County MS4 Permit as a reasonable alternative compliance option for meeting receiving water limitations. The State Water Board, however, recognized that the "success of the Los Angeles MS4 Order in addressing water quality issues depends primarily on the careful and effective development and implementation of programs consistent with the requirements of the Order."² This includes "the effort invested by Permittees in developing WMPs/EWMPs that truly address the stringent provisions of the Order, the precision with which the Los Angeles Water Board reviews the draft programs and requires revisions, and, most importantly, the actual implementation and appropriate enforcement of the programs once approved."³ In regards to rigor and accountability in the WMP development process, the State Water Board found that three components of the WMPs are essential to ensuring that proposed WMPs are in fact designed to achieve receiving water limitations within the appropriate time frame: 1) the WMPs are subject to a public review and comment period; 2) the requirement for a reasonable assurance analysis ensures that Permittees are choosing appropriate controls and milestones for the WMP; and 3) the adaptive management provisions of the Permit ensure that the Permittees will evaluate monitoring data and other new information every two years and consider progress up to that point on achieving water quality-based effluent limitations and other TMDL-specific limitations.⁴

The Los Angeles Water Board's review of the WMPs, including the Reasonable Assurance Analyses (RAA), was thorough and consistent, involving a multidisciplinary team of engineers, scientists, modelers, and planners. The Board's reviews and approvals of the WMPs were informed by significant input from the United States Environmental Protection Agency (USEPA) Region IX staff and stakeholder input, including the Petitioners. Stakeholder input on the WMPs

¹ As the State Water Board knows, the Permit also provides Permittees with the option of developing and implementing an Enhanced Watershed Management Program (EWMP). However, this matter concerns only the Los Angeles Water Board's approval of WMPs. Accordingly, this response only focuses on the development, review, and approval of the WMPs.

² State Water Board Order WQ 2015-0075 (Los Angeles County MS4 Permit), p. 7 (Section 1, RB-AR570).

³ *Id.* at 52 (Section 1, RB-AR615).

⁴ See *id.* at 37-38 (Section 1, RB-AR600 - 601).

was solicited through nine meetings of the Technical Advisory Committee (TAC), as well as RAA subcommittee meetings; written comments on the draft WMPs and revised WMPs; public workshops on the draft WMPs and revised WMPs in October 2014 and April 2015, respectively; and individual meetings between stakeholders and Board staff. Los Angeles Water Board staff prepared comments on each of the draft WMPs and held meetings with Permittees to discuss these comments. In response to Board staff's comments, Permittees submitted revised WMPs per the schedule set forth in Part VI.C of the Permit. Los Angeles Water Board staff evaluated the revised WMPs to ensure that the Board's comments were appropriately addressed.

During the review process, the Los Angeles Water Board's Executive Officer met regularly with staff to discuss the reviews. The Executive Officer determined that the revised WMPs met the requirements of the Permit, were based on well accepted technical approaches, and were sound and reasonable programs. On April 28, 2015, the Executive Officer approved, with conditions, nine WMPs pursuant to Part VI.C of the Los Angeles County MS4 Permit.⁵ The Executive Officer did so on behalf of the Los Angeles Water Board pursuant to delegated authority. In his approval letter, the Executive Officer provided the Permittees a short deadline to submit their final WMPs to the Board that satisfied all of the conditions outlined in the approval letter. The letter also indicated that the approval may be rescinded if all of the conditions were not satisfied with the timeframe provided in the letter.

On May 28, 2015, the Natural Resources Defense Council, Heal the Bay, and Los Angeles Waterkeeper (collectively, Petitioners) filed a petition for review (hereafter, Petition) challenging the Los Angeles Water Board Executive Officer's April 28, 2015 action to approve, with conditions, the nine WMPs. The Petition sought review by both the Los Angeles Water Board⁶ and the State Water Board. In its Petition, the Petitioners contend that the Executive Officer acted outside the scope of delegated authority in "conditionally" approving the WMPs and that such approvals were inconsistent with the requirements of the Los Angeles County MS4 Permit and federal Clean Water Act. While the Petitioners took issue with the conditional approvals of all nine WMPs, the focus of Petitioners' contentions concern only three of the nine – the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP. The Petitioners, however, seek invalidation of the Executive Officer's conditional approvals and denial of all nine WMPs.

Final WMPs addressing the Executive Officer's conditions were submitted in May and June 2015. In July and August 2015, after reviewing each of the final WMPs relative to the conditions in the approval letters, the Executive Officer determined that the conditions had been satisfied. The Petitioners did not file a petition challenging the Executive Officer's determinations as to the final WMPs.

The Los Angeles Water Board considered the Petition at its meeting on September 10, 2015 and ratified the Executive Officer's approvals, with conditions, of all nine WMPs. In ratifying the WMP approvals, the Los Angeles Water Board determined that the approved WMPs met the

⁵ Three of the nine WMPs were also approved, with conditions, pursuant to the City of Long Beach MS4 Permit, Order No. R4-2014-0024. The City of Long Beach MS4 Permit, issued on February 6, 2014, provides the same alternative compliance path through WMPs to the City of Long Beach for its MS4 discharges. The Petitioners have not challenged the conditional approvals of those WMPs pursuant to the City of Long Beach MS4 Permit, only his conditional approvals of those WMPs pursuant to the Los Angeles County MS4 Permit.

⁶ The Petitioners sought Los Angeles Water Board review pursuant to Part VI.A.6 of the Permit, which provides that any permittee or interested person may request review by the Los Angeles Water Board of any formal determination or approval made by the Executive Officer pursuant to the Permit. As explained in Section III.D, the Los Angeles Water Board considered the Petition on September 10, 2015.

requirements of the Permit. It also acknowledged that there is room for refinement in the WMPs, particularly in the RAAs given the limited availability of stormwater outfall data, and that the WMPs would be updated and improved over time through the adaptive management process required by the Permit as more monitoring data are obtained and actions implemented.

On October 30, 2015, subsequent to the Los Angeles Water Board's consideration of the Petition, the Petitioners filed an addendum for their petition for review (hereafter, Addendum) with the State Water Board challenging the Los Angeles Water Board's action on September 10, 2015. The Petitioners seek invalidation of the Los Angeles Water Board's action on September 10, 2015 and an order remanding the matter to the Los Angeles Water Board for further proceedings.

The Los Angeles Water Board's response to the Petition and Addendum is organized as follows. Section II provides a summary response to the contentions raised by the Petitioners in their May 28, 2015 Petition and October 30, 2015 Addendum. Section III provides background on the WMP provisions in the Los Angeles County MS4 Permit and on the WMP development, review, and approval process. Section IV is the Los Angeles Water Board's procedural objections to the October 30, 2015 Addendum. Section V provides specific responses to the contentions raised in the May 28, 2015 Petition. Section VI provides specific responses to the contentions raised in the October 30, 2015 Addendum. Section VII concludes the Los Angeles Water Board's response to the Petition and Addendum.

II. SUMMARY RESPONSE

As explained in the specific responses below, the Los Angeles Water Board disagrees with all of the contentions raised in the Petition and Addendum. The Los Angeles Water Board determined that the WMPs met the requirements of the Permit, were based on well accepted technical approaches, and were sound and reasonable programs. The Los Angeles Water Board requests that the State Water Board deny the Petitioners' requests to: 1) invalidate the Los Angeles Water Board Executive Officer's April 28, 2015 conditional approvals and deny all nine WMPs; 2) invalidate the Los Angeles Water Board's action on September 10, 2015 to ratify its Executive Officer's final approvals of the Los Angeles River Upper Reach 2 WMP, Lower San Gabriel River WMP, and Lower Los Angeles River WMP; and 3) remand the matter to the Los Angeles Water Board for further proceedings. In response to the Petitioners' contentions, the Los Angeles Water Board urges the State Water Board to uphold the Los Angeles Water Board's actions in their entirety, retaining the final approvals of all nine WMPs.

The Los Angeles Water Board's Executive Officer appropriately used his discretion in issuing conditional approvals of the nine WMPs on April 28, 2015. This was because the conditions did not generally require fundamental changes to the WMPs. Rather, the conditions largely requested revisions such as providing additional supporting or clarifying information, providing consistency within the WMP, and correcting typographical errors. Some of the conditions were related to lack of detail, particularly for actions and/or projects to be conducted later in WMP implementation in future permit cycles, or due to lack of data (e.g., source assessment and model calibration/validation), which can only be remedied with data collection. The Executive Officer determined that denial of the WMPs on the basis of needing these types of revisions was not warranted and could be appropriately addressed through individually tailored approvals with conditions to address these items. This was particularly in light of the newness of the WMP provisions in the Permit and the significant effort made by the Permittees in developing their

WMPs consistent with these provisions. The development of these watershed programs is an accomplishment never before conducted by the Permittees and has required a learning process. In addition, denial of the WMPs on the basis of needing these types of revisions could have delayed timely implementation of the Permit. The Executive Officer determined that it was more beneficial to approve the WMPs with conditions and a short period to address the conditions, such that WMP implementation could begin as soon as possible.

The Los Angeles Water Board disagrees with the Petitioners' assertion that the WMPs failed to address virtually all of the identified non-compliance issues. To the contrary, the Permittees largely addressed all of the Board's comments prior to the Executive Officer's action. However, as described in more detail below in Section III.B.4, not all of Board staff's comments necessarily required a change to be made to the draft WMP or revised WMP. In some cases, the Board's comments were addressed without further changes to the WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the submittals of the revised WMPs themselves.

The Los Angeles Water Board further disagrees with Petitioners that the WMPs' RAA provide no assurance that WMP implementation will achieve compliance with water quality standards and the Clean Water Act. The approved WMPs include technical analyses that demonstrate, with reasonable assurance, that Permittees in these watershed areas will achieve the applicable receiving water limitations and water quality-based effluent limitations to which they are subject in the Permit. Like many Permittees, however, the Board recognizes that the RAAs are not perfect. RAAs are modeling exercises that reflect current knowledge, best engineering judgment, and available data. The very purpose of a model is to aid in evaluating conditions and outcomes over space and time when limited data are available. The models used for the RAAs were calibrated using the best available local monitoring data. After reviewing the RAAs, including the input and output data as well as the calibration results, the Los Angeles Water Board has concluded that the RAAs are a robust starting point at this stage of implementation of these long-term strategic programs.

The WMPs and the RAAs will be further refined through the adaptive management process as more data become available from the expanded integrated monitoring programs and coordinated integrated monitoring programs. Lack of data can only be remedied with data collection, which will occur through the new and expanded monitoring in the Permit, including new outfall monitoring. In adopting the Permit, it was not the Los Angeles Water Board's intent to create an impossible situation whereby, due to lack of localized data, a WMP could not be approvable within the specified timeframe. As more data are obtained on water quality and the efficacy of implementation actions, the Permittees will revise and improve the WMPs, including the RAAs, through the adaptive management process.

The Los Angeles Water Board's action on September 10, 2015, ratifying the Executive Officer's approval of the nine WMPs was appropriate, proper, and within the Board's discretion. During its review of the Petition, the Los Angeles Water Board considered substantial evidence regarding the review process undertaken by its Executive Officer with the support of his staff and USEPA Region IX staff; the extensive public review and participation process, including solicitation and consideration of stakeholder input, including that of the Petitioners; Permittees' responses to Board staff's comments on the draft WMPs; and the Executive Officer's conditions of approval as reflected in the revised and final WMPs. Based on these considerations, the Los Angeles Water Board determined that the final WMPs met the requirements for an approvable WMP, and that the Executive Officer's review and approval of the WMPs was appropriate and consistent with the approval process set forth in Part VI.C of the Permit. The Los Angeles Water

Board's decision ratifying the Executive Officer's approvals of the nine WMPs supports the Permittees' implementation of their WMPs according to the compliance schedules in the Permit.

The State Water Board is urged to uphold the Los Angeles Water Board's approvals of all nine WMPs to allow the significant collaborative planning efforts that have occurred to date continue so that actions to address water quality priorities are timely implemented.

III. BACKGROUND ON WMP DEVELOPMENT, REVIEW, AND APPROVAL

A. The WMP Provisions in the Los Angeles County MS4 Permit

On November 8, 2012, the Los Angeles Water Board adopted the Los Angeles County MS4 Permit (Order No. R4-2012-0175).⁷ In developing this permit, one of the fundamental framework issues was a reconsideration of the basic permit structure. The previous permit, Order No. 01-182, was structured as a single permit whereby all 86 Permittees were assigned uniform requirements, with additional requirements for the Principal Permittee, which was the Los Angeles County Flood Control District. In Order No. 01-182, the Los Angeles Water Board began to encourage a Watershed Management Approach to address water quality protection in the region by associating Permittees with watersheds and stipulating that all Permittees participate in a watershed management committee.

The 2012 Los Angeles County MS4 Permit includes detailed watershed management provisions that establish a watershed approach as a central tenet of permit implementation. Part VI.C of the Permit allows Permittees the option to develop either a WMP or an Enhanced Watershed Management Program (EWMP) to implement permit requirements on a watershed scale through customized strategies, control measures, and best management practices (BMPs). Development of a WMP or EWMP is voluntary and may be developed individually or as part of a group. The WMP provisions provide a framework for Permittees to implement the requirements of the Los Angeles County MS4 Permit in an integrated and collaborative fashion to address the highest water quality priorities on a watershed scale, including complying with the requirements of Part V.A (Receiving Water Limitations) and Part VI.E and Attachments L through R (Total Maximum Daily Load Provisions), by customizing the control measures in Parts III.A (Prohibitions – Non-Storm Water Discharges) and VI.D (Minimum Control Measures), except the Planning and Land Development Program.

The WMP provisions of Part VI.C.5 describe the required elements of a WMP. These elements include:

- Identification of Water Quality Priorities, supported by Water Quality Characterization, Water Body-Pollutant Classification, Source Assessment, and Prioritization (Part VI.C.5.a);
- Selection of Watershed Control Measures, including Minimum Control Measures [as defined in Part VI.D.4 to Part VI.D.10], Non-Storm Water Discharge Measures, and TMDL Control Measures (Part VI.C.5.b);
- A Reasonable Assurance Analysis for each water body-pollutant combination addressed by the Watershed Management Program (Part VI.C.5.b.iv(5)); and

⁷ Los Angeles County MS4 Permit (Section 1, RB-AR1 – 563).

- Compliance Schedules that are adequate for measuring progress on a watershed scale once every two years, consistent with compliance deadlines for all applicable interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E and Attachments L through R of the Permit, and as short as possible (Part VI.C.5.c)

1. Reasonable Assurance Analysis and the Watershed Management Modeling System and Structural BMP Prioritization and Analysis Tool

One of the most sophisticated requirements of a WMP is the Reasonable Assurance Analysis (RAA). The RAA is a modeling exercise, for the most part, which is required in order to demonstrate that the watershed control measures that will be implemented through the WMP have a reasonable assurance of resulting in the required pollutant reductions necessary to achieve applicable water quality-based effluent limitations and receiving water limitations in the Permit. The RAAs represent the most extensive use of stormwater modeling to implement a MS4 permit to date.

The three WMPs with which the Petitioners take issue use state-of-the-art, peer-reviewed models that have been specifically developed for Los Angeles County watersheds -- namely the Watershed Management Modeling System (WMMS) developed by the County of Los Angeles, and the Structural BMP Prioritization and Analysis Tool (SBPAT) developed under contract for the City of Los Angeles, Heal the Bay, and County of Los Angeles.⁸ These two models are specifically identified in Part VI.C.5.b.iv.(5) of the Permit as models that may be used to conduct a RAA.

Unlike a situation where a municipality may be using a nationally developed watershed model lacking region specific data, the Permittees in Los Angeles County were able to use these models, which represent Los Angeles County watersheds and waterbodies at a high resolution. To give an example of the level of detail in these models, the Los Angeles River Watershed is broken into 1,016 subwatersheds and 270 reach segments in WMMS, while the San Gabriel River Watershed, which includes the Los Cerritos Channel Watershed Management Area, is broken into 534 subwatersheds and 171 reach segments.⁹ Twenty-one hydrologic response units are used to characterize land use/cover in each subwatershed, by incorporating land use data from 2008, slope, and soil type.¹⁰ Rainfall is characterized using 148 rainfall gages.¹¹

During their development, these models were calibrated at the regional/countywide level using local data on precipitation, soils, hydrology, and water quality among other data. During the development of WMPs during the period 2013 - 2014, model input data including precipitation and hydrology were updated.

Model calibration essentially refers to the process of adjusting an existing model—such as those used in the WMPs' RAAs—so that the model's outputs more accurately represent the system being modeled. In the case of the hydrology and water quality models used in the RAA,

⁸ WMP RAA Models & Data (Section 8, RB-AR1932 - 1933).

⁹ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pg. 11.

¹⁰ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pgs. 11-26.

¹¹ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pg. 27.

calibration entails fine-tuning adjustable model parameters so that the model's output more closely matches actual monitoring data.

Documentation for WMMS can be found on the Los Angeles County Department of Public Works website at: <http://dpw.lacounty.gov/wmd/wmms/res.aspx>.¹²

*Los Angeles County Watershed Model Configuration and Calibration—Part I: Hydrology*¹³ (pgs. 60-94) explains WMMS' hydrological calibration. This calibration procedure systematically calibrates Hydrologic Response Units (HRUs) throughout Los Angeles County. Following calibration, "model validation" is performed at a downstream gage near the mouth of the Los Angeles River (see pg. 86).

*Los Angeles County Watershed Model Configuration and Calibration—Part II: Water Quality*¹⁴ (pgs. 17-98) explains WMMS' water quality calibration. The calibration procedure varies model parameters so that HRU and EMC (Event Mean Concentration) responses fit observed data from the watershed; accounts for in-stream point sources and hydromodification; and validates the model by comparing outputs with downstream mass emission station data. As a part of this procedure, a sediment calibration was also performed (see pg. 18).

As stated above, the WMMS was updated by the County of Los Angeles with pertinent precipitation and streamflow data from the years since the initial WMMS calibration.

As described by Geosyntec, SBPAT is a "public domain, 'open source' GIS-based water quality analysis tool intended to 1) facilitate the prioritization and selection of BMP project opportunities and technologies in urbanized watersheds, and 2) quantify benefits, costs, uncertainties and potential risks associated with stormwater quality projects."¹⁵

The quantification/analysis module of SBPAT uses:

- Land use based Event Mean Concentrations;
- Environmental Protection Agency Stormwater Management Model (EPA-SWMM);
- United States Environmental Protection Agency/American Society of Civil Engineers (USEPA/ASCE) International BMP Database;
- Site data; and
- A Monte Carlo Approach to quantify water quality benefits and uncertainties.

While a certain amount of data are required to calibrate any model by comparing the modeling results to real world conditions, the very purpose of a model is to aid in evaluating conditions and outcomes over space and time when limited data are available. As data continue to be collected, model results are validated and model inputs and assumptions are adjusted if necessary. In the case of the WMPs, the RAAs will be further refined through the required adaptive management process set forth in Part VI.C.8 of the Permit as more local data become available from the expanded integrated monitoring programs and coordinated integrated monitoring programs implemented in conjunction with the WMPs.

¹² WMP RAA Models & Data (Section 8, RB-AR1932).

¹³ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015).

¹⁴ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_II.pdf (last accessed December 9, 2015).

¹⁵ WMP RAA Models & Data (Section 8, RB-AR1933). See, specifically, SBPAT Homepage: <http://sbpat.net/> (last accessed December 9, 2015).

2. Other WMP Provision Requirements

Pursuant to Part VI.C.7, Permittees in each Watershed Management Area (WMA) must develop a monitoring program in conjunction with a WMP to support an assessment of progress toward achieving the water quality-based effluent limitations and receiving water limitations addressed by the WMP, and to support the required adaptive management process for WMPs set forth in Part VI.C.8.

Pursuant to Part VI.C.4.d, during the development of a WMP, i.e., from the effective date of the Permit (December 28, 2012) to the date of WMP approval (April 2015), Permittees were required to continue to implement: (i) watershed control measures in their existing storm water management programs; (ii) measures to eliminate non-storm water discharges through the MS4 that are a source of pollutants to receiving waters; and (iii) measures from existing TMDL implementation plans, to ensure that MS4 discharges achieve compliance with interim and final trash WQBELs and all other final WQBELs and receiving water limitations pursuant to Part VI.E and set forth in Attachments L through R by the applicable compliance deadlines occurring prior to approval of a WMP. Additionally, to be granted an 18-month period for WMP development, Permittees were required to have Low Impact Development (LID) ordinances and green streets policies in place or in development in greater than 50% of the land area covered by the WMP. The Permittees in the nine WMPs at issue in this petition made this additional commitment to LID and green street policy development during the development of their WMPs.

The WMP provisions in Part VI.C of the Permit also outline a process for development, review, and, if appropriate, approval of a WMP.¹⁶ The steps of this process and applicable deadlines include the following:

Step	Deadline
Permittees notify the Los Angeles Water Board of intent to develop a WMP	6 months after permit effective date (June 28, 2013)
Permittees submit draft WMPs	18 months after Permit effective date (June 28, 2014)
Los Angeles Water Board provides comments on draft WMPs to Permittees	4 months after submittal of draft WMP (varies)
Permittees submit final WMP	3 months after receipt of Los Angeles Water Board comments on draft WMP (varies)
Approval or denial of final WMP by Los Angeles Water Board or by Executive Officer on behalf of the Los Angeles Water Board	3 months after submittal of final WMP (April 28, 2015)
Permittees begin implementation of WMP	Upon approval of final WMP (April 28, 2015)

¹⁶ Order No. R4-2012-0175 as amended by State Water Board Order WQ 2015-0075 (Section 1, RB-AR698 - 703).

Part VI.C.4.e of the Permit specifies that Permittees that do not have an approved WMP within 28 months of the Permit's effective date (thus, by April 28, 2015) shall be subject to the baseline requirements of Part VI.D of the Permit and shall demonstrate compliance with receiving water limitations pursuant to Part V.A and with applicable interim and final water quality-based effluent limitations in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3) and VI.E.2.e.i.(1)-(3).

B. The WMP Development, Review, and Approval Process

The WMP development, review, and approval process was an extensive process that occurred over a nearly two-and-a-half year period. The process included review of the draft WMPs and revised WMPs by a multidisciplinary team of Los Angeles Water Board staff, including engineers, scientists, modelers and planners, and USEPA Region IX staff, and multiple opportunities for stakeholder input on the WMPs through information sessions and public workshops hosted by Permittees and by the Los Angeles Water Board, technical advisory committee (TAC) and subcommittee meetings, written comments, and individual meetings among Board staff, Permittees, and stakeholders.

As noted above, there were several steps in the process. Details about each of these steps are provided below, and depicted in Figure 1 to this Response (included at the end of this response).

1. Submittal and Review of Notifications of Intent to Develop WMPs

By June 28, 2013, the Los Angeles Water Board received eighteen notifications of intent to develop a WMP, either individually or as a member of a group. Los Angeles Water Board staff reviewed each of the notifications of intent and provided direction to Permittees on additional actions, documentation, or revisions that were needed to proceed with the development of a draft WMP.¹⁷ For example, for a small non-contiguous area of the City of Los Angeles identified in the Santa Monica Bay subwatershed notification of intent, Los Angeles Water Board staff presented options to the City of Los Angeles to address this area through an individual WMP, combine it with a geographically contiguous area, or opt to follow the baseline requirements in Part VI.D and demonstrate compliance with receiving water limitations pursuant to Part V.A and with applicable interim and final WQBELs in Part VI.E pursuant to subparts VI.E.2.d.i.(1)-(3) and VI.E.2.e.i.(1)-(3), respectively.¹⁸

2. Submittal and Review of, and Comments on, Draft WMPs

The Los Angeles Water Board received sixteen draft WMPs from Permittees by the eighteen month due date of June 28, 2014.¹⁹ Following receipt of these draft WMPs, and beginning on July 3, 2014, the Los Angeles Water Board provided a 46-day public review and written comment period on the draft WMPs.²⁰ The Petitioners along with others such as the

¹⁷ For Board staff's reviews of the notifications of intent to develop a WMP/EWMP, see Section 19, AR-RB2723 - 2724; Section 20, AR-RB3353 - 3354; Section 22, RB-AR5441 - 5443; Section 23, RB-AR6991 - 6994; Section 24, RB-AR10126 - 10129; Section 25, RB-AR13230 - 13234; Section 26, RB-AR16611 - 16614 & RB-AR16638; and Section 27, RB-AR17146 - 17147.

¹⁸ Regional Board Review of Notice of Intent from Santa Monica Bay J2 & J3, and City of LA are in J7 (Section 26, AR-RB16611 - 16614).

¹⁹ Two Permittees that initially submitted an individual notification of intent chose to join an EWMP prior to the deadline for submitting a draft WMP.

²⁰ Notice of Opportunity for Public Comment on Watershed Management Program Deliverables (Section 9, RB-AR1934).

Construction Industry Coalition on Water Quality (CICWQ) submitted written comments on the draft WMPs during this comment period.²¹

Concurrently with the public review and comment period, the Los Angeles Water Board staff reviewed the draft WMPs. Board staff also teamed up with USEPA Region IX staff to jointly review the draft WMPs. Each WMP was assigned a lead reviewer who coordinated their review with a counterpart at USEPA Region IX. The Los Angeles Water Board's Storm Water Permitting Unit Chief and Regional Programs Section Chief oversaw all reviews and regularly provided direction to staff conducting the reviews. Additionally, Board staff consulted with TMDL program staff, including the in-house expert on watershed modeling, regarding review of the reasonable assurance analyses (RAA). During the review period, Board staff and USEPA staff held conference calls on a weekly basis to discuss the draft WMPs. Throughout the review process, the Executive Officer was regularly kept apprised of Board staff and USEPA staff's review of the draft WMPs.

In conducting its review, Los Angeles Water Board staff developed a list of review and evaluation questions that were derived from the WMP provisions in the Permit.²² The purpose of these questions was to comprehensively guide the reviewer in their review of the draft WMPs and to ensure consistency among the reviewers. All Los Angeles Water Board staff reviewers, as well as USEPA Region IX staff, used this common set of review and evaluation questions in their review. The reviews were also informed by the detailed technical discussions at the Technical Advisory Committee (TAC) meetings and RAA subcommittee meetings over the previous year, as well as the RAA guidelines that Board staff produced to provide additional direction to Permittees on conducting RAAs.²³ Board staff also applied best professional judgment in their review, utilizing their educational background and expertise in water quality, engineering, and modeling, among other subject areas, in evaluating and providing comments on the draft WMPs.

At its October 9, 2014 meeting, the Los Angeles Water Board held a workshop on the draft WMPs. Board staff made a presentation on the status of its review of the draft WMPs; Permittees gave presentations on their draft WMPs; and interested persons were provided with an opportunity to make oral comments.²⁴ The Los Angeles Water Board also provided feedback, acknowledging and supporting the efforts of Permittees in developing the draft WMPs, while also asking questions about the assumptions and modeling used in the draft WMPs and raising concerns about the funding and timing of WMP implementation.²⁵

Of the sixteen draft WMPs that were submitted by Permittees by the June 28, 2014 deadline, the Los Angeles Water Board determined that seven were deficient submittals that did not meet the basic requirements for a draft WMP in the Los Angeles County MS4 Permit. The Permittees that submitted these draft WMPs were each issued a Notice of Deficient Submittal.²⁶

On the basis of Los Angeles Water Board staff's review, USEPA Region IX staff's review, and in consideration of written and oral comments made by interested persons, the Board provided

²¹ Comments on Draft Watershed Management Programs (Section 10, RB-AR1938 - 1992).

²² Draft Watershed Management Programs Review and Evaluation Questions (Section 11, RB-AR1993 - 1997).

²³ TAC Meetings (Section 3, RB-AR1225 - 1458); RAA Subcommittee Meetings (Section 4, RB-AR1459 - 1590); Reasonable Assurance Analysis Guidelines (Section 6, RB-AR1604 - 1805).

²⁴ Documentation related to October 2014 Board Workshop on draft WMPs (Sections 12 - 15, RB-AR1998 - 2264)

²⁵ Certified Transcript for October 9, 2014 Board Meeting (Section 15, RB-AR2248 - 2564).

²⁶ The Permittees that received a Notice of Deficient Submittal were the cities of Compton, Carson, Lawndale, Gardena, Irwindale, South El Monte and West Covina. Many of these Permittees have since joined an EWMP.

comments in October 2014 on the remaining nine draft WMPs identifying the revisions that needed to be addressed prior to the Board's approval of the WMPs, and directed the Permittees to submit revised draft WMPs addressing the Board's comments by approximately January 28, 2015 for Board review.²⁷

3. Submittal and Review of Revised WMPs

As dictated by the WMP development timeline, Permittees submitted revisions to their draft WMPs to the Los Angeles Water Board in January 2015 (within three months after receiving comments from the Los Angeles Water Board).²⁸

While the Los Angeles Water Board did not provide the public an opportunity to submit written comments on the revised WMPs, the Petitioners nevertheless submitted written comments on the revised WMPs on March 25, 2015.²⁹ Although unsolicited, the Petitioners' written comments on the revised WMPs were nevertheless considered by the Board and included in the administrative record.

In response to the Petitioners' written comments, on April 13, 2015, Los Angeles Water Board staff held a public meeting for Permittees and interested persons to discuss the Executive Officer's pending consideration for approval or denial of the revised WMPs. The meeting provided a forum for Permittees and interested persons to discuss the revised WMPs with the Executive Officer and staff. Los Angeles Water Board members were invited to attend this meeting to listen to comments, ask questions, and provide feedback to the Executive Officer. Several Board members did attend this workshop. The meeting included comments from the Petitioners on the revised WMPs; presentations from the WMP Permittees/groups regarding the revisions made in response to the Board's comments on the draft WMPs; and a question and answer session.³⁰

²⁷ For Board staff's written comments on the draft WMPs, see Section 19, RB-AR2848 - 2859; Section 20, RB-AR3750 - 3758; Section 21, RB-AR4811 - 4822; Section 22, RB-AR5907 - 5917; Section 23, RB-AR7889 - 7903; Section 24, RB-AR11227 - 11241; Section 25, RB-AR14464 - 14478; Section 26, RB-AR16815 - 16820; and Section 27, RB-AR17306 - 17321.

²⁸ For revised WMPs, see Alamitos Bay/Los Cerritos Channel Watershed Management Group (Section 19, RB-AR2866 - 2972), East San Gabriel Valley Watershed Management Group (Section 20, RB-AR3766 - 3971), City of El Monte (Section 21, RB-AR4828 - 4998), Los Angeles River Upper Reach 2 Watershed Management Group (Section 22, RB-AR5926 - 6181), Los Cerritos Channel Watershed Management Group (Section 23, RB-AR7912 - 8808), Lower Los Angeles River Watershed Management Group (Section 24, RB-AR11251 - 12024), Lower San Gabriel River Watershed Management Group (Section 25, RB-AR14487 - 15326), Santa Monica Bay Watershed Jurisdiction 7 (Section 26, RB-AR16831 - 16901), City of Walnut (Section 27, RB-AR17329 - 17595).

²⁹ On March 25, 2015, the Executive Officer was copied on an email communication from Liz Crosson of Los Angeles Waterkeeper containing written comments on the revised WMPs from the Petitioners (see Section 16, RB-AR2565 - 2581). The Executive Officer did not respond to the email communication. This email communication constituted an ex parte communication to the Executive Officer from an interested person in a pending proceeding, regarding an issue in the proceeding, without notice and opportunity for all parties to participate in the communication. The Los Angeles Water Board understands that the email communication was a result of the mistaken belief that communications concerning the pending approval or denial of the revised WMPs were not prohibited. The Los Angeles Water Board disclosed the communication in accordance with Government Code section 11430.50. (See Section 17, RB-AR2582 - 2583.) Permittees and interested persons were advised they could orally address the communication during the April 13, 2015 public meeting.

³⁰ For documentation regarding the Public Meeting on April 13, 2015 on Revised Watershed Management Programs (WMPs) Pursuant to the Los Angeles County MS4 Permit, see Sections 17 - 18, RB-AR2582 - 2674.

4. Approval of WMPs

On April 28, 2015, the Executive Officer, on behalf of the Los Angeles Water Board, approved, with conditions, the following nine WMPs:³¹

- Los Angeles River Upper Reach 2 Subwatershed
- Lower Los Angeles River Watershed
- East San Gabriel Valley Watershed Management Area
- Lower San Gabriel River
- Los Cerritos Channel Watershed
- Santa Monica Bay Watershed Jurisdiction 7
- Alamitos Bay/Los Cerritos Channel Group
- El Monte
- Walnut

The Lower Los Angeles River Watershed WMP, the Lower San Gabriel River WMP, and the Los Cerritos Channel Watershed WMP were also approved, with conditions, pursuant to the City of Long Beach MS4 Permit, Order No. R4-2014-0024.

The Executive Officer provided the Permittees with a short deadline to submit their final WMPs to the Board that satisfied all of the conditions outlined in the approval letter. The Executive Officer's conditions did not generally require fundamental changes to the WMPs. Rather, the conditions largely requested revisions such as providing additional supporting or clarifying information, providing consistency within the WMP, and correcting typographical errors. Some of the conditions provided direction on adaptive management -- a requirement of the Permit -- where there was a lack of detail, particularly for actions and/or projects to be conducted later in WMP implementation, in future permit cycles, or due to lack of data (e.g., source assessment and model calibration/validation), which will be remedied with data collection and through the adaptive management process. In the conditional approval letters, the Executive Officer required that Permittees refine and recalibrate the RAA as new data become available.³²

Moreover, most of the revised WMPs could have been approved by the Executive Officer without any conditions as the revised WMPs met the requirements of the Permit. However, the Executive Officer chose to approve the WMPs with conditions to ensure that Permittees were fully responsive to the Board's comments on the WMPs, and it would result in a better final WMP.

Further, Petitioners assume that all of the Los Angeles Water Board's comments in its review letters necessarily required a change to be made to the draft WMP or revised draft WMP. In some cases, the Board's comments were addressed without further changes to the WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the submittals of the revised WMPs themselves. Many Permittees included matrices with their

³¹ For the Executive Officer's approvals of the revised WMPs, see Alamitos Bay/Los Cerritos Channel Watershed Management Group (Section 19, RB-AR3046 - 3051), East San Gabriel Valley Watershed Management Group (Section 20, RB-AR4179 - 4185), City of El Monte (Section 21, RB-AR5065 - 5072), Los Angeles River Upper Reach 2 Watershed Management Group (Section 22, RB-AR6329 - 6336), Los Cerritos Channel Watershed Management Group (Section 23, RB-AR8974 - 8981), Lower Los Angeles River Watershed Management Group (Section 24, RB-AR12217 - 12224), Lower San Gabriel River Watershed Management Group (Section 25, RB-AR15519 - 15526), Santa Monica Bay Watershed Jurisdiction 7 (Section 26, RB-AR17047 - 17052), City of Walnut (Section 27, RB-AR17596 - 17601).

³² *Ibid.*

revised WMPs that summarized how each of the Board's comments on the draft WMP was addressed.³³

The letter also indicated that the approval may be rescinded if all of the conditions were not satisfied within the timeframe provided in the letter. The letter also directed the Permittees to begin implementation of their approved WMPs immediately pursuant to Part VI.C.6 of the Permit.³⁴

Each of the seven WMP groups and the two individual Permittees submitted final WMPs in June 2015 that satisfied the conditions in the Executive Officer's approval. After reviewing each of the final WMPs relative to the conditions in the approval letters, the Executive Officer confirmed, in a letter to each in July and August 2015, that the conditions had been satisfied.³⁵

5. Other Activities during WMP Development, Review, and Approval Process

Throughout the above-mentioned timeline of events, Permittees and stakeholders were also involved in additional activities related to WMP development. These included:

i. Technical Advisory Committee (TAC) Meetings

The WMP/EWMP provisions in the Los Angeles County MS4 Permit call for the formation and meeting of a TAC "that will advise and participate in the development of the Watershed Management Programs and enhanced Watershed Management Programs from month 6 through the date of program approval"³⁶ The TAC included Los Angeles Water Board staff, Permittees representing each of the WMPs and EWMPs, and representatives from non-governmental organizations, including the Petitioners.³⁷

In accordance with the Permit, nine TAC meetings were convened from July 2013 to September 2014.³⁸ These meetings discussed the RAA, control measure implementation, monitoring, and other issues related to WMP development. In addition to these meetings, an RAA subcommittee met four times from September 2013 to January 2014.³⁹

³³ See Alamitos Bay/Los Cerritos Channel Watershed Management Group (Section 19, RB-AR2973 - 2985), East San Gabriel Valley Watershed Management Group (Section 20, RB-AR3972 - 3974), City of El Monte (Section 21, RB-AR4999 - 5003), Los Cerritos Channel Watershed Management Group (Section 23, RB-AR8809 - 8824), Lower Los Angeles River Watershed Management Group (Section 24, RB-AR12025 - 12033), Lower San Gabriel River Watershed Management Group (Section 25, RB-AR15327 - 15335), Santa Monica Bay Watershed Jurisdiction 7 (Section 26, RB-AR16902 - 16903).

³⁴ See, for example, the Watershed Management Program Approval with Conditions for the Los Angeles River Upper Reach 2 Watershed Management Group (Section 22, RB-AR6329 - 6336).

³⁵ For the Executive Officer's determinations regarding the final WMPs, see Alamitos Bay/Los Cerritos Channel Watershed Management Group (Section 19, RB-AR3216 - 3217), East San Gabriel Valley Watershed Management Group (Section 20, RB-AR4409 - 4410), City of El Monte (Section 21, RB-AR5243 - 5244), Los Angeles River Upper Reach 2 Watershed Management Group (Section 22, RB-AR6609 - 6611), Los Cerritos Channel Watershed Management Group (Section 23, RB-AR10068 - 10069), Lower Los Angeles River Watershed Management Group (Section 24, RB-AR13117 - 13118), Lower San Gabriel River Watershed Management Group (Section 25, RB-AR16378 - 16379), Santa Monica Bay Watershed Jurisdiction 7 (Section 26, RB-AR17124 - 17125), City of Walnut (Section 27, RB-AR17798 - 17799).

³⁶ Order No. R4-2012-0075 as amended by State Water Board Order WQ 2015-0075, pg. 49 (Section 1, RB-AR693).

³⁷ *Ibid.*

³⁸ See, generally, TAC Meetings (Section 3, RB-AR1225 - 1458).

³⁹ See, generally, RAA Subcommittee Meetings (Section 4, RB-AR1459 - 1590).

ii. Reasonable Assurance Analysis (RAA) Guidelines

Los Angeles Water Board staff collaborated with stakeholders to release *Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, including an Enhanced Watershed Management Program* to assist Permittees in RAA development.⁴⁰ Prior to the release of the final guidelines, in the fall 2013 and winter 2013-14, Los Angeles Water Board staff circulated draft and revised draft versions to stakeholders for review and comment.⁴¹

iii. Stakeholder Participation

In addition to the opportunities to provide written and oral comments described above, Los Angeles Water Board staff participated in a multitude of meetings, phone calls, and email exchanges with Permittees and other stakeholders, including the Petitioners, throughout the WMP development process. Documents related to meetings are included in the administrative record.⁴²

iv. Other WMP-related Meetings

During the period of WMP development, Los Angeles Water Board staff convened several additional information sessions and workshops on WMP-related topics including stormwater program funding and low impact development (LID).⁴³

C. Geography of the Nine Approved WMPs

Most of the nine WMPs approved by the Los Angeles Water Board are located in the southern part of Los Angeles County, where geology and soils limit regional stormwater retention opportunities (which are the hallmark of the EWMPs), while a few WMPs are located in the eastern part of the county. The nine WMPs range in size from a single Permittee to as many as 14 Permittees. Figure 2 below shows the area covered by the Los Angeles County MS4 Permit, and highlights the watershed areas covered by the nine approved WMPs.

⁴⁰ Final Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program (Section 6, RB-AR1771 – 1805).

⁴¹ Reasonable Assurance Analysis Guidelines (Section 6, RB-AR1604 – 1770).

⁴² Meetings with WMP Groups and Stakeholders (Section 7, RB-AR1806 - 1930).

⁴³ Information Sessions/Workshops Convened by Water Board Staff (Section 2, RB-AR965 - 1224).

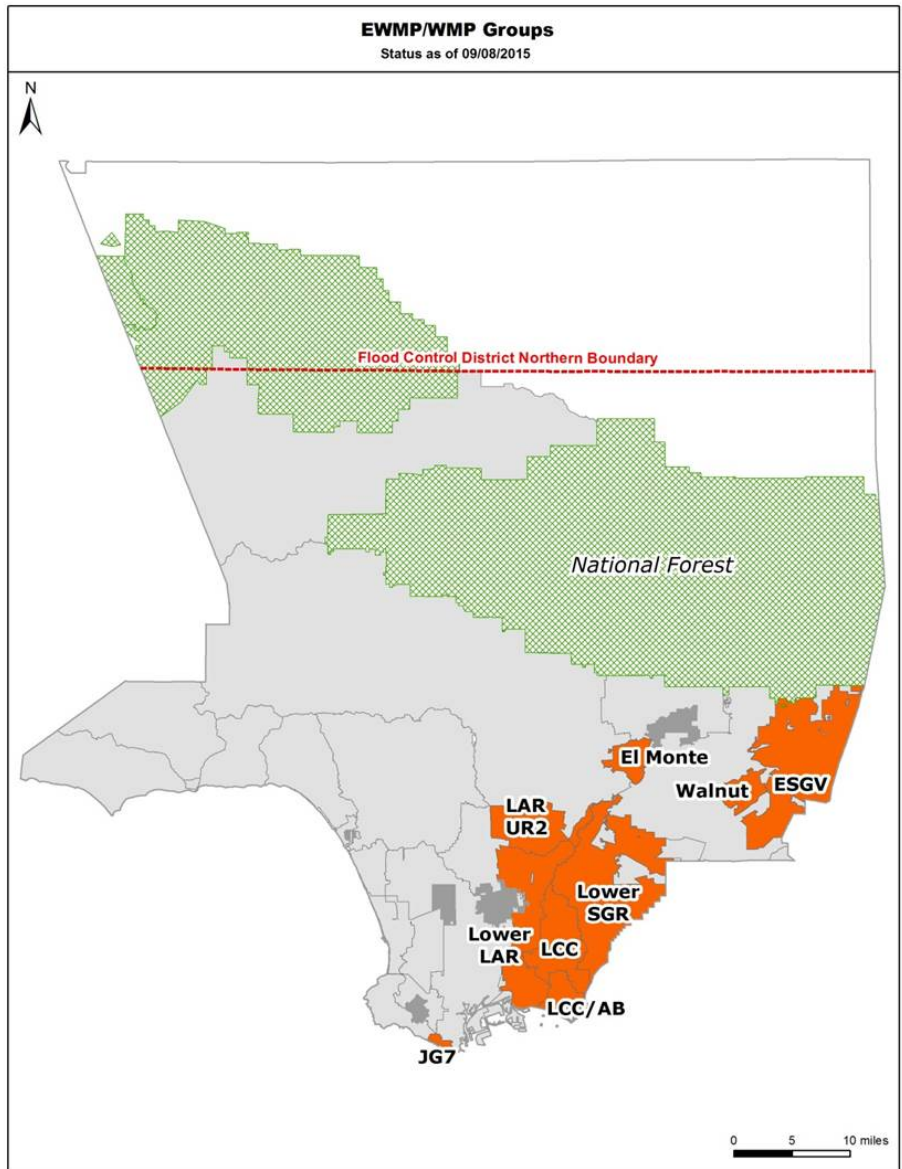


Figure 2. Location of Nine WMPs within Los Angeles County

D. Petition for Review by the Los Angeles Water Board

On May 28, 2015, the Petitioners filed the Petition with both the Los Angeles Water Board and the State Water Board, seeking review of the Los Angeles Water Board Executive Officer's action to conditionally approve the nine WMPs. The Petitioners sought review by the Los Angeles Water Board pursuant to Part VI.A.6 of the Los Angeles County MS4 Permit. Part VI.A.6 provides that any permittee or interested person may request review by the Los Angeles Water Board of any formal determination or approval made by the Executive Officer pursuant to the Permit. A permittee or interested person may request such review by the Los Angeles Water Board upon petition within 30 days of the notification of such decision to the permittee(s) and interested persons on file at the Board.⁴⁴ This provision was included in the Permit to address input received during development of the Permit in light of the new watershed based paradigm for Permit implementation.

The Petitioners alleged that the Executive Officer: (1) improperly acted outside the scope of delegated authority in "conditionally" approving the WMPs because the only authority explicitly delegated to the Executive Officer by the Los Angeles Water Board in the Permit was to approve or deny WMPs; (2) improperly modified the Permit by failing to comply with the substantive and procedural requirements pursuant to state and federal law, and exceeded the statutory limits for delegations; and (3) improperly imposed conditions in the approvals that are inconsistent with Permit requirements and the federal Clean Water Act. The Petitioners requested that the Los Angeles Water Board invalidate the Executive Officer's approvals, with conditions, and deny all nine WMPs.

It is important to note that the Petition, including the detailed technical comments in Exhibit D to the Petition, only specifically alleged substantive inadequacies of three of the nine WMPs, namely the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP. The Petitioners did not allege any specific challenges to the substantive adequacy of the remaining six WMPs, but still requested that the Los Angeles Water Board invalidate the Executive Officer's approvals with conditions for those six WMPs. Without specific factual allegations concerning an inadequacy of a WMP, the Petitioners did not provide the Board with specific allegations to review. The Board was thus left to speculate as to Petitioners' concerns with the remaining six WMPs.

In addition, while three of the nine WMPs were also approved pursuant to the City of Long Beach MS4 Permit, the Petition did not seek review of the Executive Officer's conditional approvals pursuant to the City of Long Beach MS4 Permit, only the Los Angeles County MS4 Permit.

On July 3, 2015, the Los Angeles Water Board publicly noticed the Petition, provided an opportunity for Permittees and interested persons to respond to the Petition, and indicated that it would consider the Petition at its meeting on September 10, 2015.⁴⁵ The deadline for submittal of responses to the Petition was August 3, 2015. Nine responses to the Petition were received.⁴⁶

⁴⁴ See Order No. R4-2012-0175 as amended by Order WQ 2015-0075, p. 42 (Section 1, RB-AR686).

⁴⁵ See Notice of Opportunity to Respond to Petition and Notice of Public Meeting (Section 30, RB-AR18028 – 18040). On July 22, 2015, a revised notice was sent indicating that additional documents were available on the Los Angeles Water Board's website. See Revised Notice of Opportunity to Respond to Petition and Notice of Meeting (Section 30, RB-AR18041 – 18046).

⁴⁶ See generally Responses to Petition for Review (Section 31, RB-AR18047 – 18206).

To aid in the Los Angeles Water Board's review of the Petition, Board staff provided the Board with materials pertaining to the development, review, and approval process of the nine WMPs. This included the Petition, responses to the Petition, documents pertaining to each of the nine WMPs, and internal WMP review and evaluations questions.⁴⁷ Due to the voluminous nature of these documents (several thousand pages), they were provided to the Board on a CD several weeks before the hearing.⁴⁸ For the Los Angeles Water Board's reference, Board staff also prepared three response matrices providing detailed written responses to the technical and legal contentions raised in the Petition, as well as an assessment of the Petitioners' March 25, 2015 letter commenting on the revised WMPs.⁴⁹ Responses to the technical contentions specifically pertained to the alleged substantive inadequacies of the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP as those are the WMPs specifically challenged by the Petition.

The Los Angeles Water Board considered the Petition at its meeting on September 10, 2015. The Board heard a brief introduction on the background and context for the Board's consideration of the Petition, a presentation by the Petitioners, responses to the legal and technical contentions by Board legal counsel and staff, responses to the Petition by Permittees and interested persons, and a rebuttal by the Petitioners.⁵⁰ The Board members then asked questions, made statements, and deliberated on the information presented concerning both the legal contentions and the technical contentions raised in the Petition. The Los Angeles Water Board considered three general options regarding its action on the petition for each of the nine WMPs. These were to ratify the Executive Officer's approvals; overturn the Executive Officer's approvals; or conduct further proceedings on the Petition as determined by the Board.⁵¹

In discussing the contentions, the Board determined that the approved WMPs met the requirements of the Permit. However, the Board also acknowledged room for improvement and refinement in the WMPs, and their supporting RAAs, as more monitoring data are collected and actions implemented. In discussing the approved WMPs, Board member Maria Mehranian stated:⁵²

...And I'm believing that there was scientific methodologies, and there was processes, and there was science, and there was modeling, and there was these things included and evolved, and it's important to recognize it.

And I want to respectfully disagree with the professor, it says "commitment to strategies but it doesn't commit," or it says, "Reasonable Assurance Analysis maybe works, maybe doesn't," these are huge -- some of these projects are huge infrastructure projects. They should be engineered. They're going to take time. They're going to be tested. When it says it could

⁴⁷ See generally Materials Provided to the Los Angeles Water Board for its Consideration of the Petition for Review (Section 32, RB-AR18207 – 18292).

⁴⁸ The CD was sent to the Los Angeles Water Board on August 13, 2015. See Section 32, RB-AR18287 – 18292.

⁴⁹ See Regional Board Staff's Response to the Petition (Section 32, RB-AR18213 – 18286).

⁵⁰ See generally Certified Transcript for September 10, 2015 Meeting (Section 33, 18621 - 18803). See also the PowerPoint Presentations provided at the hearing (Section 32, RB-AR18313 – 18433).

⁵¹ As it was the Executive Officer's action, based on input from Board staff, that the Los Angeles Water Board was reviewing by considering the Petition, the Executive Officer and staff opted not to make a recommendation to the Board on the available options. Rather, the purpose of staff's presentation was to explain the WMP review and approval process and why the Executive Officer determined that an approval, with conditions, was appropriate for all nine WMPs.

⁵² Certified Transcript for September 10, 2015 Meeting, p. 345:24 – 347:7 (Section 33, RB-AR18778 – 18780).

have or it would have or it might have, it's the only way to say some of these things because they're quite complicated projects.

But the importance is that they're required. And right now the cities have responded. We are monitoring them. And the whole idea of the fact that they're - I'm excited that the guidelines for the stormwater capture on the -- on the Water Bond is out. The cities can now go apply and do more. And I agree with some of my colleagues, I don't want to stop this process. I don't. I want them -- as one of the consultants said, we're going to have the rainy season and we have more projects today that are going to do stormwater capture. I was thrilled listening about all these little projects here and there that are popping up in the city because of this work. And I think in order to understand this work and appreciate it, it's important to understand the spirit of MS4, because the MS4 allows time for improving what we have.

And could this plan be better? Of course it can. Could we develop a better plan? Yes. But is the process in place? I think it is. Is there modeling? Is there science involved? Yes, it is, and I'm proud and I want to stand by it.

At the conclusion of the hearing, the Los Angeles Water Board ratified the Executive Officer's conditional approvals for all nine WMPs, upholding the Executive Officer's authority under the Los Angeles County MS4 Permit to conditionally approve the WMPs and finding that the WMPs met the requirements of the Permit.⁵³

IV. PROCEDURAL OBJECTIONS

The Los Angeles Water Board objects to the Petitioners' Addendum, which was received by the State Water Board on October 30, 2015. In their so-called Addendum, the Petitioners specifically seek review of the Los Angeles Water Board's "action on September 10, 2015 to ratify the Regional Board Executive Officer's final approvals of three specific Watershed Management Programs ('WMPs')" pursuant to the Los Angeles County MS4 Permit.⁵⁴ The Petitioners allege that the Los Angeles Water Board's action on September 10, 2015 "was inappropriate, improper, and an abuse of discretion"⁵⁵ and specifically "seek an order by the State Board to invalidate the Regional Board's action on September 10, 2015 to ratify the Executive Officer's final approvals of the Los Angeles River Upper Reach 2, Lower San Gabriel River, and Lower Los Angeles River WMPs."⁵⁶ In addition, throughout their Addendum, the Petitioners take issue with, and respond to, Los Angeles Water Board staff's statements made at the September 10, 2015 hearing. Thus, it is clear that the Addendum is not actually an addendum at all, but rather a new petition challenging the Los Angeles Water Board's September 10, 2015 ratification. For the reasons explained below, the Petitioners' Addendum should not be accepted by the State Water Board.

As an initial matter, the Los Angeles Water Board's action on September 10, 2015, ratifying its Executive Officer's prior approvals with conditions on nine WMPs, is not a regional board action that is subject to review by the State Water Board under Water Code section 13320. The

⁵³ See Certified Transcript for September 10, 2015 Meeting (Section 33, RB-AR18761 – 18803). See also Request for State Water Board to Take Official Notice of or to Accept Supplemental Evidence, January 15, 2016, Exhibit A, Los Angeles Water Board's Meeting Minutes for September 10, 2015.

⁵⁴ Addendum, p. 1.

⁵⁵ *Id.* at 2.

⁵⁶ *Id.* at 27.

Petitioners acknowledge the applicability of Water Code section 13320 in this matter, stating “Petitioners’ authority to seek State Board review of the Regional Board’s action on September 10, 2015 is provided under Water Code § 13320.”⁵⁷ Water Code section 13320, subdivision (a), authorizes petitions for review by the State Water Board of certain types of actions or failures to act by a regional board. A regional water board’s reconsideration of an action taken by its executive officer, and any resulting ratification of the executive officer’s action, is not an “action or failure to act” within the meaning of Water Code section 13320. The Executive Officer acted on behalf of the Los Angeles Water Board in issuing the conditional approvals and later determining that the conditions had been satisfied. A regional water board’s ratification of its executive officer’s prior action is not itself an “action,” except to the extent the board makes any changes to the Executive Officer’s action (which did not occur in this instance). This is no different than a board’s refusal to reopen a final permit or other order issued by the board itself. A “failure to act” does not include a refusal to reconsider a final order; reading the statute in that manner would allow interested persons to trump section 13320’s 30-day statute of limitations simply by making a belated request for reconsideration. Although Petitioners timely filed their original Petition, the Los Angeles Water Board’s refusal to rescind or modify the Executive Officer’s prior approvals did not create a new opportunity to file a petition. Thus, the Los Angeles Water Board took no action on September 10, 2015 that is properly subject to review by the State Water Board under Water Code section 13320. Accordingly, the Petitioners’ Addendum does not allege any actions, or failures to act, by the Los Angeles Water Board that would give rise to a petition for review under Water Code section 13320 and the State Water Board should take no further action with respect to the Addendum.

Even assuming the Addendum, which explicitly states that it is a petition of the Los Angeles Water Board’s action on September 10, 2015, relates to an “action or failure to act” subject to State Water Board review under Water Code section 13320, the Addendum was not timely filed with the State Water Board. The Los Angeles Water Board concluded its consideration of this matter on September 10, 2015. A petition must be filed within 30 days of the action or failure to act.⁵⁸ This deadline to file a petition is clear and is strictly enforced by the State Water Board.⁵⁹ In this case, the deadline for receipt of any petition challenging the Los Angeles Water Board’s September 10, 2015 “action” was October 12, 2015. The Addendum submitted by Petitioners was received by the State Water Board by email on October 30, 2015, which is 50 days after September 10, 2015. The Petitioners fail to provide any justification whatsoever as to why their untimely Addendum should be accepted by the State Water Board, despite the fact that the Petitioners were well aware of the legal requirement for filing a timely petition with the State Water Board given their timely filing of their May 28, 2015 petition. The Addendum was therefore not timely received and should be rejected by the State Water Board.

If the Petitioners’ Addendum is, in fact, an addendum to the Petitioners’ May 28, 2015 petition (which the Los Angeles Water Board disputes), the Addendum is not authorized by the State Water Board’s own petition regulations. The Petitioners’ original Petition challenges the Los Angeles Water Board Executive Officer’s action on April 28, 2015 to conditionally approve nine WMPs. Compared to the Petition, the Addendum only challenges the substance of the final

⁵⁷ *Id.* at 3.

⁵⁸ Wat. Code, § 13320, subd. (a); Cal. Code Regs., tit. 23, § 2050, subd. (b).

⁵⁹ See, e.g., State Water Board Order WQ 2015-0075 (Los Angeles County MS4 Permit), p. 7 (Section 1, RBAR570), whereby, in response to an “amended petition” filed by the City of El Monte, the State Water Board stated “Water Code section 13320, subdivision (a) provides that a petition for review of a regional water quality control board (regional water board) action must be filed within 30 days of the regional water board’s action. *The State Water Board interprets that requirement strictly and petitions filed more than 30 days from regional water board action are rejected as untimely.*” (emphasis added).

approved WMPs by challenging the Los Angeles Water Board's action on September 10, 2015. Many of the contentions raised in the Addendum are either more detailed (such that they provide greater clarity of the issues raised in the original Petition) or is a new contention that were not first raised to the Los Angeles Water Board. As noted in Sections VI.A.5 and VI.B.3 below, the Petitioners raise a new contention in the Addendum alleging that volume reduction targets are unenforceable and contingent. This contention was not previously raised to the Los Angeles Water Board. Pursuant to the State Water Board's own petition regulations, the Petitioners were required to file a *complete* petition in the first instance, and no provisions authorize petitioners to later file an addendum to their petition.⁶⁰ A complete petition must also include a statement of points and authorities.⁶¹ The Addendum was therefore not submitted in conformance with the State Water Board's regulations.

Further, any petition to the State Water Board "shall be limited to those substantive issues or objections that were raised before the regional board."⁶² If the Petitioners were authorized to submit an addendum to their original petition, any addendum should have been submitted to the Los Angeles Water Board *before* it considered the Petitioners' original request to review the conditional approvals on September 10, 2015. The Petitioners do not explain in their Addendum why they were not required or were unable to raise the more-detailed and/or new contentions to the Los Angeles Water Board before September 10, 2015.⁶³ This is because they cannot provide such an explanation.⁶⁴ Instead, the Petitioners filed an unauthorized addendum 50 days *after* the Los Angeles Water Board considered the Petitioners' original petition. Failure on the part of the Petitioners to raise the more-detailed and/or new contentions to the Los Angeles Water Board is cause for the State Water Board to reject the Addendum.

In addition, the Los Angeles Water Board Executive Officer's determinations, in the summer of 2015, that the conditions identified in his April 28, 2015 approvals had been satisfied are also subject to review under Water Code section 13320. However, the Petitioners did not challenge the Executive Officer's determinations by filing another petition with either the Los Angeles Water Board or the State Water Board. After review of the final WMPs submitted to the Los Angeles Water Board on June 12, 2015, the Executive Officer determined on July 21, 2015, July 21, 2015, and August 13, 2015 that the final WMPs satisfied all of the conditions identified in his conditional approval letters for the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2, respectively. Petitioners cannot avoid the legal requirements for filing a petition by merely calling it an addendum to a previously filed petition. Therefore, any attempts by the Petitioners to challenge these later actions are time barred.

⁶⁰ Cal. Code Regs., tit. 23, § 2050, subd. (a)(4) [a petition shall contain a "full and complete statement of the reasons the action or failure to act was inappropriate or improper"].

⁶¹ *Id.*, subd. (a)(7).

⁶² *Id.*, subd. (c); *see also*, subd. (a)(9).

⁶³ The Petitioners commented on various iterations of the WMPs. While the Petitioners were not provided an opportunity to comment on the conditions imposed by the Executive Officer, the Petitioners have not raised any substantive issues with the conditions themselves, aside from procedural contentions concerning the Executive Officer's authority to impose such conditions.

⁶⁴ To the extent that the Petitioners' position is they could not have submitted an addendum until after the Los Angeles Water Board acted, such a position only supports the Los Angeles Water Board's objection that the Addendum is a new petition challenging the Los Angeles Water Board's action on September 10, 2015, which is not reviewable by the State Water Board under Water Code section 13320 and/or is untimely. In addition, it is notable that on August 24, 2015, the Petitioners requested that the State Water Board place their original petition in abeyance until November 9, 2015 "given the fact that the State Board is unlikely to act on the petition until the Regional Board first gets the opportunity to review the petition on September 10, 2015."

Lastly, the Los Angeles Water is not asserting any procedural objections to the Petitioners' May 28, 2015 petition. The Los Angeles Water Board acknowledges that its Executive Officer's actions to approve, with conditions, the nine WMPs on April 28, 2015 are actions that are properly subject to State Water Board review under Water Code section 13320, and that the Petition was timely filed. However, the Los Angeles Water Board agrees with others (e.g., CASQA and several Los Angeles County MS4 permittees) that the allegations in the Petition are moot in light of the Executive Officer's determinations in July and August 2105 that the conditions had been satisfied by the Permittees resulting in approved final WMPs, which the Petitioners did not challenge.

V. SPECIFIC RESPONSES TO CONTENTIONS RAISED BY MAY 28, 2015 PETITION

As noted above in Section III.D, as part of the Los Angeles Water Board's consideration of the Petition on September 10, 2015, Board staff prepared detailed written responses to the legal and technical contentions raised in the Petition. In responding to the Petition for the State Water Board, the Los Angeles Water Board hereby incorporates by reference those detailed written responses, which are attached as Exhibit A to this response.⁶⁵ Exhibit A consists of three response matrices. The main response matrix provides the Los Angeles Water Board's response to the contentions raised by the Petitioners in their Memorandum of Points and Authorities, including detailed responses to the legal contentions. This main response matrix has two attachments. Attachment 1 provides the Board's response to Petitioners' detailed technical comments in its Memorandum of Points and Authorities and in their Exhibit D to the Petition. The Board also assessed the Petitioners' March 25, 2015 letter commenting on the revised WMPs, which is included as Attachment 2. Note that Attachments 1 and 2 specifically pertain to the alleged substantive inadequacies of the Lower San Gabriel River WMP, Lower Los Angeles River WMP, and Los Angeles River Upper Reach 2 WMP as those are the WMPs specifically challenged by the Petition.

For ease of reference, the Los Angeles Water Board has provided a summary of its response to three contentions raised in the Petition below.

A. Summary of Response to Contention 1

Contention: The Petitioners first assert that the Executive Officer improperly acted outside the scope of delegated authority in "conditionally" approving the WMPs because the only authority explicitly delegated to the Executive Officer by the Los Angeles Water Board in the Permit was to approve or deny the WMPs. In addition, because the Permit does not specifically authorize a "conditional approval" of the WMPs, the Petitioners also appear to assert that neither the Executive Officer nor the Board itself (if it would have taken the same action) has any legal authority to approve a WMP with conditions, and could have only provided an unconditional approval or denied the WMP in its entirety.

Response: The Los Angeles Water Board disagrees. The Executive Officer acted within the scope of his delegated authority in approving the WMPs with conditions. Pursuant to Water Code section 13223, a regional water board has the authority to delegate any of its powers and duties, with limited exceptions, to its Executive Officer. The Los Angeles Water Board has done

⁶⁵ The responses are also included in the Administrative Record at Section 32, RB-AR18213 – 18286.

so in Resolution No. R14-005, “Delegation of Authority to Executive Officer.” In its delegation, the Board has delegated “to its Executive Officer all powers and duties to conduct and to supervise the activities of the Regional Board,” including, but not limited to, “exercising any powers and duties of the Regional Board.”⁶⁶ The Board also specifically delegated to the Executive Officer, in Part VI.C.4 (Table 9) of the Los Angeles County MS4 Permit, the authority to “approve or deny” a final WMP on behalf of the Board.⁶⁷

Petitioners are interpreting the delegation of authority to the Executive Officer in the Los Angeles County MS4 Permit literally and narrowly, which is not supported by the terms of the Permit or the practice of the Los Angeles Water Board. While the Permit says that the Board, or the Executive Officer on behalf of the Board, must approve or deny the final WMP by a time certain, the Permit does not dictate that any approvals must be unconditional or include any other language limiting the discretion of the Board in the specific manner of approving a WMP. Thus, the Board did not limit itself, or the Executive Officer, to only strictly approving or denying a WMP.

Unless specifically limited, delegated authority is broadly construed.⁶⁸ The Executive Officer’s action to approve, with conditions, the nine WMPs was an action within the broad scope of authority delegated to the Executive Officer by the Board in Resolution No. R14-005, as well as within specific delegated authority in the Permit. In Part VI.C of the Permit, the Board provides the Executive Officer with broad authority pertaining to administering the WMP/EWMP provisions on behalf of the Board, including authority to approve or deny WMPs,⁶⁹ approve or deny requests for modifications to certain deadlines in a WMP/EWMP,⁷⁰ approve or deny integrated monitoring programs and coordinated integrated monitoring programs,⁷¹ require modifications and updates to a WMP/EWMP,⁷² and review and approve modifications to WMPs/EWMPs.⁷³

In addition, a well-established principle of administrative law provides that an agency’s authority to approve or disapprove inherently includes the authority to approve with conditions. The petitioners in *Connecticut Fund for the Environment, Inc. v. EPA* made a very similar argument to what Petitioners assert in this matter.⁷⁴ In that case, an environmental group asserted that USEPA could not conditionally approve a state implementation plan under the Clean Air Act because the statute required USEPA to “approve or disapprove” the plan within four months of submission. Under USEPA’s conditional approval procedures, a plan that is in substantial compliance with the Act may be conditionally approved as satisfying the Act if the state provides strong assurances that the remaining minor deficiencies will be remedied within a specified short period.⁷⁵ The environmental group argued that the literal “approve or disapprove” language and the absence of any mention of conditional approvals in the Clean Air Act

⁶⁶ See Request for State Water Board to Take Official Notice of or to Accept Supplemental Evidence, January 15, 2016, Exhibit B, Los Angeles Water Board Resolution No. R14-005, at 2. This delegation of authority is periodically updated by the Board, most recently in 2014.

⁶⁷ Order No. R4-2012-0175 as amended by Order WQ 2015-0075, p. 55 (Section 1, RB-AR699).

⁶⁸ See *County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 509-510 [California Legislature’s broad delegation of authority to the Secretary of State to regulate voting systems includes the authority to condition approval of the use of particular voting machines on certain procedural safeguards, including postelection tallies].

⁶⁹ Order No. R4-2012-0175 as amended by Order WQ 2015-0075, Part VI.C.4, at p. 55 (Section 1, RB-AR699).

⁷⁰ *Id.* at Parts VI.C.4.g, at p. 59, and VI.C.6.a, at p. 67 (Section 1, RB-AR703, 711).

⁷¹ *Id.* at Part VI.C.7, at p. 67 (Section 1, RB-AR711).

⁷² *Id.* at Part VI.C.8.b.i, at 69-70 (Section 1, RB-AR713 - 714).

⁷³ *Ibid.*

⁷⁴ (2d Cir. 1982) 672 F.2d 998.

⁷⁵ *Id.* at 1005.

precluded USEPA's conditional approval.⁷⁶ The Court of Appeal for the Second Circuit declined to construe the Act as allowing only outright approval or disapproval of state plans. The Court held: "But this Court has held that an agency's power to approve conditionally is inherent in the power to approve or disapprove."⁷⁷ The Court further held:⁷⁸

[T]he power to condition ... approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove. We would be sacrificing substance to form if we held invalid any conditional approval but affirmed an unqualified rejection accompanied by an opinion which explicitly stated that approval would be forthcoming if modifications were made.

The Court further noted that a conditional approval offers administrative agencies a measured course that may be more precisely tailored to particular circumstances than the all-or-nothing choice of outright approval or disapproval.⁷⁹ Lastly, the Court stated that the conditional approval mechanism, in the context of the Clean Air Act, gave USEPA the necessary flexibility to work more closely with the states and that it generally deferred to USEPA's choice of methods to carry out its difficult and complex job as long as that choice is reasonable and consistent with the Act.⁸⁰

Here, the authority to conditionally approve is a necessary and proper exercise of the Executive Officer's power to accomplish the purpose for which the Los Angeles Water Board delegated its authority in the Permit. In addition, a permitting agency is given substantial deference by appellate bodies in interpreting its own permits. As such, it is proper and reasonable for the Board to interpret the Executive Officer's delegated authority to provide the flexibility of an approval with conditions to fulfill the goals of the Permit. Using his discretion, the Executive Officer determined that denial of the WMPs on the basis of requesting the types of revisions previously described, in Section III.B.4. above, was not warranted and could be appropriately addressed within a specified short period through individually tailored approvals with conditions to address these items.

USEPA also utilizes procedures that provide for conditional approvals under the Clean Water Act. For example, USEPA specifically allows the use of conditional approvals in carrying out its review of a state's water quality standards under Clean Water Act section 303(c).⁸¹ This is despite any express "conditional approval" language in section 303(c).

Moreover, the Executive Officer's action conditionally approving the WMPs is wholly consistent with a long-standing practice of the Los Angeles Water Board to approve submitted documents with conditions when deemed appropriate. When appropriate, the Executive Officer regularly conditionally approves submitted documents on behalf of the Board, including monitoring plans, TMDL work plans, permit workplans, and site cleanup workplans and remedial action plans.⁸²

⁷⁶ *Id.* at 1006.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* [citing *U.S. v. Chesapeake & Ohio Ry.*, 426 U.S. 500, 514 [involving the Interstate Commerce Commission's powers under the Interstate Commerce Act]].

⁸⁰ *Ibid.*

⁸¹ See Request for State Water Board to Take Official Notice of or to Accept Supplemental Evidence, January 15, 2016, Exhibit C, Chapter 6 (Procedures for Review and Revision of Water Quality Standards) of USEPA's Water Quality Standards Handbook, at Section 6.2.1. (p. 12).

⁸² See, e.g., Letter dated December 6, 2005 from Jonathan S. Bishop, Executive Officer of the Los Angeles Water Board (Section 31, RB-AR18092 – 18096).

Other regional water boards, as well as the State Water Board, also routinely issue conditional approvals pertaining to both water quality and water rights matters.⁸³ This common practice by the Water Boards recognizes that regional water boards and the State Water Board require flexibility to manage their programs efficiently and effectively.

Lastly, as previously noted, the Executive Officer also approved, with conditions, three of the nine WMPs pursuant to the City of Long Beach MS4 Permit. This was done pursuant to the same delegation language contained in both the Los Angeles County and City of Long Beach MS4 permits. Yet, the Petitioners do not seek review of the Executive Officer's approval, with conditions, pursuant to the City of Long Beach MS4 Permit. The deadline for Petitioners to seek review has passed and those approvals, with conditions, are final. If the Executive Officer had authority to conditionally approve WMPs pursuant to the City of Long Beach MS4 Permit, it is unclear why Petitioners would assert that no such authority existed as to the Los Angeles County MS4 Permit.

B. Summary of Response to Contention 2

Contention: Petitioners assert that, by conditionally approving WMPs, the Executive Officer improperly modified the Permit in violation of the substantive and procedural requirements of state and federal law. Because they allege a conditional approval is a procedure not provided for in the Permit, Petitioners assert that the Executive Officer de facto amended the Permit terms, creating a new process, timeline, and set of standards by conditionally approving WMPs without circulation of a required draft permit, public notice, fact sheet, or public hearing date.

Response: The Los Angeles Water Board disagrees. Because the Executive Officer's approvals of the WMPs with conditions was within the scope of delegated authority, as explained above, the Permit did not need to be modified or amended to allow the Executive Officer the authority to approve the WMPs with conditions. As such, the Executive Officer's inclusion of conditions to the approval of the WMPs did not modify the Permit or amend any of its terms by creating a new process, timeline, or set of standards. The terms of the Permit, including procedures and deadlines pertaining to WMP review and approval, did not change. As such, the procedures noted by the Petitioners, including circulation of a draft permit, public notice, fact sheet, or public hearing, were not required prior to the Executive Officer's action.

In addition, the method by which the Executive Officer approved the WMPs did not defer a Permittees' compliance with receiving water limitations and TMDL limitations. To the contrary, the Permittees were instructed to begin implementation of their respective WMPs immediately upon approval.⁸⁴ In addition, additional time to address the imposed conditions did not defer compliance with TMDL or receiving water limitations compliance schedules, as TMDL schedules are not changed by WMPs or the dates by which a WMP is approved.

⁸³ See, e.g., Letter dated December 16, 2011 from Kurt V. Berchtold, Executive Officer of the Santa Ana Regional Water Quality Control Board (Section 31, RB-AR18097 – 18098); Letter dated July 26, 2010 from Pamela C. Creedon, Executive Officer of the Central Valley Regional Water Quality Control Board (Section 31, RB-AR18099 – 18102). See also Request for State Water Board to Take Official Notice of or to Accept Supplemental Evidence, January 15, 2016, Exhibit D, Letter dated July 7, 2015 from Thomas Howard, Executive Director of the State Water Board.

⁸⁴ See, e.g. Watershed Management Program Approval with Conditions for Los Angeles River Upper Reach 2 WMP (Section 22, RB-AR6329 - 6336) ["Pursuant to Part VI.C.6 of the LA County MS4 Permit, the Permittees of the LAR UR2 WMG shall begin implementation of the approved WMP immediately]. The same instruction was provided to each WMP in the conditional approval letter.

Prior to the approvals with conditions of the WMPs, the Board complied with the public review requirements of the Permit, which requires that “all documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.”⁸⁵ As described in detail in Section III.B above, the Board exceeded these minimum permit requirements pertaining to stakeholder participation by providing a 46-day public review and comment period on the draft WMPs, as well as providing forums for stakeholders to provide their comments on the draft WMPs to the Executive Officer and the Los Angeles Water Board members, first at a Board workshop held on October 9, 2014, prior to Board staff issuing comments on the draft WMPs and, second, at a public meeting on April 13, 2015 attended by Board members and the Executive Officer to discuss the revised WMPs prior to the Executive Officer’s decision to approve or deny the nine WMPs.

Petitioners cite *Environmental Defense Center v. EPA*⁸⁶ as support for their contention that the Executive Officer’s conditional approval of the WMPs amended the terms of the Permit because an approved WMP becomes substantive terms of the Permit. As described above, the Executive Officer’s action did not amend the terms of the Permit. Approved WMPs implement the terms of Permit by detailing the specific actions and milestones a Permittee will abide by to achieve compliance with the terms of the Permit. An approved WMP, however, does not amend the terms of the Permit. The terms of the Permit remain unchanged, including the receiving water limitations and water-quality based effluent limitations. Moreover, *Environmental Defense Center* is not on point. In that case, environmental groups sought judicial review of a USEPA rule mandating that discharges from small MS4s and construction sites be subject to NPDES permitting requirements. Under the rule, small MS4s could seek permission to discharge by submitting an individualized set of BMPs in six specific categories, either in the form of an individual permit application or in the form of a notice of intent (NOI) to comply with a Phase II general permit. USEPA did not require that permitting authorities review an NOI before a party who submitted the notice of intent was allowed to discharge. The environmental groups asserted that, by allowing permitting authorities to grant dischargers permits based on unreviewed notices of intent, the rule constituted a program of impermissible regulation and failed to provide required avenues of public participation.⁸⁷ The Court of Appeal for the Ninth Circuit agreed with the environmental groups in this respect, holding that USEPA failed to require review of notices of intent assuring compliance with Clean Water Act standards and also failed to make notices of intent available to the public.⁸⁸ The Court held: “[S]tormwater management programs that are designed by regulated parties must, in every instance be subject to meaningful review by an appropriate regulatory entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.”⁸⁹

Here, as described in detail in Section III.B. above, the WMPs were subject to public review and comment, including at Board and staff level meetings, as well as an opportunity to submit written comments. Petitioners also submitted written comments on the draft and revised WMPs. And, prior to the Executive Officer’s approvals, the WMPs underwent extensive review by Board staff and USEPA Region IX staff to assure compliance with the standards set forth in the Permit. Thus, unlike the notices of intent in the *Environmental Defense Center* case, the WMPs here were subject to “meaningful review.”

⁸⁵ Order No. R4-2012-0175 as amended by Order WQ 2015-0075, p. 42 (Section 1, RB-AR686).

⁸⁶ (9th Cir. 2003) 344 F.3d 832.

⁸⁷ *Id.* at p. 854.

⁸⁸ *Id.* at p. 858.

⁸⁹ *Id.* at p. 856.

C. Summary of Response to Contention 3

Contention: The terms of the conditional approvals are inconsistent with Permit requirements and the federal Clean Water Act and therefore establish that the only available course of action for the Executive Officer was to deny the WMPs. Petitioners state that, following submission of the initial draft WMPs, Board staff identified numerous and significant failures to comply with Permit requirements that were not addressed by the Permittees in their revised WMPs nor in the Executive Officer's conditions. The Petitioners' technical contentions are summarized on pages 13-15 of the Petition's Memorandum of Points and Authorities, and described in more detail in Exhibit D to the Petition.

Response: The Los Angeles Water Board disagrees. The Executive Officer determined that the nine WMPs, with the conditions imposed, met the WMP provisions in the Permit and thus the Clean Water Act, as the Permit implements and meets the requirements of the Clean Water Act. The Los Angeles Water Board's responses to the Petitioners' detailed technical contentions in its Memorandum of Points of Authorities and Exhibit D to the Petition, is attached hereto in Exhibit A (Attachment 1). Attachment 1 is organized in a matrix format that mirrors Exhibit D to the Petition.

The Board disagrees with the Petitioners' statement that the revised WMPs "failed to address virtually all of the identified non-compliance issues."⁹⁰ In fact, Board staff found and stated in correspondence to the Permittees that each of the draft WMPs, "for the most part ... includes the elements and analysis required in Part VI.C of the LA County MS4 Permit."⁹¹

As described in Section III.B above, not all of Board staff's comments ultimately required a change to be made to the draft WMP or revised WMP. After Board staff provided comments on the draft WMPs, many meetings ensued for Permittees to provide clarification on their approaches, and for Permittees and Board staff to discuss how Permittees could best address the issues raised in Board staff's comments. Where Board staff did not feel the issue was fully addressed, staff discussed this with the Executive Officer and the Executive Officer included conditions in his approval to ensure the issue was addressed satisfactorily. Ultimately, the Board did not find that any of its comments on the draft WMPs or conditions of the Executive Officer's approvals were ignored. The WMP groups/Permittees were diligent in addressing the comments and conditions, including re-running the Reasonable Assurance Analysis (RAA) and identifying and committing to additional specific projects, among others.

The Petitioners in particular make a variety of allegations related to the RAA conducted for the three WMPs with which they specifically take issue. The Petition states that, "Perhaps the most glaring deficiency in the WMPs is the flawed Reasonable Assurance Analysis ("RAA") in each."⁹² The RAA is a detailed modeling exercise, intended to ensure that the WMPs ultimately achieve the required water quality outcomes of the Permit. The RAA is a key element of a

⁹⁰ Petition, Memorandum of Points and Authorities, at p. 11.

⁹¹ For Board staff's written comments on the draft WMPs, see Alamitos Bay/Los Cerritos Channel Watershed Management Group (Section 19, RB-AR2848 – 2859); East San Gabriel Valley Watershed Management Group (Section 20, RB-AR3750 – 3758); City of El Monte (Section 21, RB-AR4811 – 4822); Los Angeles River Upper Reach 2 Watershed Management Group (Section 22, RB-AR5907 – 5917); Los Cerritos Channel Watershed Management Group (Section 23, RB-AR7889 – 7903); Lower Los Angeles River Watershed Management Group (Section 24, RB-AR11227 – 11241); Lower San Gabriel River Watershed Management Group (Section 25, RB-AR14464 – 14478); Santa Monica Bay Watershed Jurisdiction 7 (Section 26, RB-AR16815 – 16820); and City of Walnut (Section 27, RB-AR17306 – 17321).

⁹² Petition, Memorandum of Points and Authorities, at p. 11.

WMP. Initially, the RAA is required to focus particularly on deadlines in the current term of the Permit and the next permit term. Board staff provided comments to the Permittees on the RAAs specifically along with comments on the other elements of the draft WMPs.⁹³

Specifically, Petitioners allege that the WMPs for the Lower San Gabriel River, Los Angeles River Upper Reach 2, and Lower Los Angeles River either failed to meaningfully address or completely ignored all of Board staff's identified comments. The Board disagrees that the Permittees for these WMPs failed to address the Board's comments on their RAAs. The RAAs represent the most extensive use of stormwater modeling to implement a MS4 permit to date, and all three WMPs use state-of-the-art, peer-reviewed models that are regionally calibrated for Los Angeles County watersheds, as required by the Permit.⁹⁴ Board staff concluded that they are a reasonable and robust starting point at this stage of WMP implementation. Unlike a situation where a municipality may be using a nationally developed watershed model lacking region specific data, the Permittees in Los Angeles County were able to use models that were pre-calibrated at the regional/countywide level – namely the Watershed Management Modeling System (WMMS) developed by the County of Los Angeles, and the Structural BMP Prioritization and Analysis Tool (SBPAT) developed under contract for the City of Los Angeles, Heal the Bay, and County of Los Angeles.⁹⁵ To give an example of the level of detail in these models, the Los Angeles River Watershed is broken into 1,016 subwatersheds and 270 reach segments in WMMS, while the San Gabriel River Watershed, which includes the Los Cerritos Channel Watershed Management Area, is broken into 534 subwatersheds and 171 reach segments.⁹⁶ Twenty-one hydrologic response units are used to characterize land use/cover in each subwatershed, by incorporating land use data from 2008, slope, and soil type.⁹⁷ Rainfall is characterized using 148 rainfall gages.⁹⁸

Further, as described in Section III.B above, Board staff, with input from Permittees and the Petitioners through the TAC, developed a guidance document on conducting RAAs.⁹⁹ The RAAs will be further refined through the adaptive management process as more local data become available from the expanded integrated monitoring programs and coordinated integrated monitoring programs.

VI. SPECIFIC RESPONSES TO CONTENTIONS RAISED BY OCTOBER 30, 2015 ADDENDUM

The Addendum seeks review of the Los Angeles Water Board's action on September 10, 2015 to ratify the Executive Officer's approvals of three specific WMPs. The Petitioners contend that

⁹³ Los Angeles Water Board staff's review letters on the draft WMPs are in Sections 19 – 27 of the Administrative Record. See, for example, Review of Draft Watershed Management Program for Los Angeles River Upper Reach 2 Watershed Management Program (RB-AR5915 to RB-AR5917).

⁹⁴ See Sec. 8 RAA Modeling Files (RB-AR1931 through RB-AR1933) for information on WMP RAA Models & Data.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pg. 11.

⁹⁷ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pgs. 11-26.

⁹⁸ *Ibid.* See, specifically, http://dpw.lacounty.gov/wmd/wmms/docs/Final_Phase_I_Modeling_Report_Part_I.pdf (last accessed December 9, 2015), pg. 27.

⁹⁹ See Final Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, including an Enhanced Watershed Management Program with Appendices A, B, and C (Section 6, RB-AR1771 – 1805).

the Los Angeles Water Board “ignored facial deficiencies” in upholding the final WMPs for the Lower San Gabriel River WMP, Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP. The Petitioners allege specific deficiencies in each of those final WMPs.

The Los Angeles Water Board disagrees and has prepared detailed written responses to the contentions raised by the Petitioners in the Addendum, which are hereby incorporated by reference and attached as Exhibits B and C to this response. The Petitioners presented many of their contentions in a matrix format, grouped by WMP. In order to be fully responsive to the Petitioners’ contentions, the Los Angeles Water Board has used this same matrix format in Exhibits B and C.

The matrices included in Exhibit C were originally developed by the Petitioners and were included as Exhibit B of the Addendum.

The matrices cover the Petitioners’ contended deficiencies in the Lower San Gabriel River, the Lower Los Angeles River, and the Los Angeles River Upper Reach 2 WMPs. The contentions have indexes and include columns for:

1. “Board Comments from October ... 2014” and “Permit Citation”: the Petitioners’ summary and quotation of Los Angeles Water Board staff comments and associated permit citations provided to the WMP Groups after staff’s review of the draft WMPs;
2. “Analysis of Revised WMP (January ... 2015) in response to Board Comments”: the Petitioners’ analysis of the issue as addressed in the revised WMPs;
3. “Conditional Approval Requirements (April 28, 2015)”: the Petitioners’ citation of condition requirements included in the Los Angeles Water Board Executive Officer’s Approvals of the WMPs;
4. “Analysis of Final WMP (June 12, 2015)”: the Petitioners’ analysis of the Final WMPs submitted in response to the Los Angeles Water Board Executive Officer’s Approvals;
5. Response Letter from WMP Group (e.g. “In LSGR Response Letter #2”): the Petitioners’ summary and citation of responses from the WMP Groups regarding the contention;
6. “Analysis of Response Letter statements”: the Petitioners’ analysis of responses from the WMP Groups;
7. “Staff Response (August 2015)”: the Petitioners’ summary and quotation of Los Angeles Water Board staff’s response to the cited contention as provided in materials for the Los Angeles Water Board’s consideration of the Petition on September 10, 2015; and
8. “Analysis of Staff Response”: the Petitioners’ analysis of Los Angeles Water Board staff’s response provided in the materials for the Los Angeles Water Board’s consideration of the Petition on September 10, 2015.

Additionally, the Petitioners color coded the matrices various shades of red to indicate their assessment of the magnitude of the deficiencies. According to the Petitioners, the darker the shade of red, the more serious they consider the WMP deficiency that they have identified.

The Los Angeles Water Board has included an additional column in each of the three matrices to respond to the issues that the Petitioners consider still outstanding (i.e., the rows of the matrix that are still colored red). These new responses convey that the issues the Petitioners raise have been addressed or include misinterpretations.

For ease of reference, the Los Angeles Water Board has provided a summary of its response to the contentions below, organized according to WMP. Where a contention raised in the

Addendum was previously raised by the Petitioners and addressed by the Los Angeles Water Board, this is noted and the previous response is provided in Exhibit B.

A. Contentions Related to the Lower San Gabriel River WMP

In their Addendum, the Petitioners allege that the Lower San Gabriel River WMP fails to comply with Permit requirements in six areas: 1) no clear schedule to demonstrate that compliance will be achieved “as soon as possible,” 2) no commitment or demonstration that receiving water limitations for pollutants not addressed by TMDLs will be achieved, 3) insufficient specificity with regard to structure and non-structural BMPs, 4) insufficient specificity with regard to the achievement of interim milestones, 5) lack of measurable milestones to evaluate compliance, and 6) unenforceable and contingent volumetric reduction targets. The first five of these contentions were previously raised by Petitioners and addressed by the Los Angeles Water Board. Further response is provided below for a subset of these contentions, as well as for the sixth contention, which was not previously raised by the Petitioners in the Petition.

1. Response to Contentions 1 and 2 Pertaining to Compliance Schedules and Attainment of Receiving Water Limitations

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff’s *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Responses 1 and 3*.¹⁰⁰ In further response to this contention, the Lower San Gabriel River WMP Group commits to a compliance schedule with a final compliance date of 2026 that is based on its RAA. This RAA uses a “limiting pollutant” approach that is meant to address applicable TMDL compliance schedules as well as all pollutants, including pollutants with receiving water limitations that are not addressed by TMDLs.¹⁰¹ This RAA, and the resulting compliance schedule, are not based on financial terms.

Given that the Group continues to seek funding for the projects needed for its current compliance schedule, which deals with the highest priority TMDL pollutants, it is reasonable to conclude that the Group cannot commit to (and substantiate) additional expedited compliance schedules for certain non-TMDL pollutants.¹⁰² The Group itself notes in the revised WMP the “aggressiveness” of the compliance schedule that it has already proposed.¹⁰³ Evaluating the Group’s response in conjunction with what the Group has already committed to and what other Groups have committed to, the Board did not find that there was reason to require further expedited compliance schedules from the Group.

2. Response to Contention 3 Regarding Lack of Specificity with Regard to Structural and Non-Structural BMPs

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff’s *Assessment of NRDC/LAWK/HTB*

¹⁰⁰ See Exhibit A, Attachment 2, pgs. 20-24.

¹⁰¹ See Revised Watershed Management Program (Section 25, RB-AR14648 – 14660).

¹⁰² Furthermore, for many of these non-TMDL pollutants the Group has noted (in Table 2-20 of the WMP) that it is “unable to determine at this time” whether the pollutant is associated with MS4 discharges.

¹⁰³ See Revised Watershed Management Program (Section 25, RB-AR14641).

March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Responses 3 and 4.¹⁰⁴ In further response to this contention, the Lower San Gabriel River WMP Group states in their revised WMP, “[e]ven though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to constructing the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules.”¹⁰⁵ The Board interprets this as an explicit commitment that responds directly to Board staff’s original comment of “[a]lthough it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.”¹⁰⁶

3. Response to Contention 4 Regarding Insufficient Specificity with Regard to the Achievement of Interim Milestones for TMDLs

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff’s *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 4*.¹⁰⁷

4. Response to Contention 5 Regarding Lack of Measureable Milestones to Evaluate Compliance

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs, particularly with respect to nonstructural BMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff’s *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 8*.¹⁰⁸

In further response to this contention, Section 5.4 of the Lower San Gabriel River WMP lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2020, and 2026.¹⁰⁹ These BMP capacities are taken directly from the WMP’s RAA.¹¹⁰

If a Permittee does not achieve these BMP volume capacities by a milestone date, it is not in compliance with its WMP. Furthermore, these volumes allow for an assessment of progress toward interim and final water quality-based effluent limitations and receiving water limitations every two years.

5. Response to Contention 6 Regarding Unenforceable and Contingent Volumetric Reduction Targets

The Petitioners raise a new contention in the Addendum that, “[t]he volumetric reductions in the Lower San Gabriel River WMP, however, are conditioned on obtaining funding; and, for

¹⁰⁴ See Exhibit A, Attachment 2, pgs. 23-25 (Section 32, RB-AR18279 – 18281).

¹⁰⁵ See Revised Watershed Management Program, pg. 5-6 (Section 25, RB-AR14646).

¹⁰⁶ See Review of Draft Watershed Management Program (Section 25, RB-AR14469).

¹⁰⁷ See Exhibit A, Attachment 2, pgs. 24-25 (Section 32, RB-AR18280 – 18281).

¹⁰⁸ See Exhibit A, Attachment 2, pgs. 28-29 (Section 32, RB-AR18284 – 18285).

¹⁰⁹ See Revised Watershed Management Program, pgs. 5-8 to 5-20 (Section 25, RB-AR14648 - 14660).

¹¹⁰ See RAA Modeling Files (included on separate DVD) (Section 8, RB-AR1931); Revised Watershed Management Program (Section 25, RB-AR14930 – 15276).

pollutants not addressed by a TMDL, any deadlines are tentative at best.”¹¹¹ The Petitioners further contend that as soon as Permittees of the Lower San Gabriel River WMP Group demonstrate a failure to obtain funding for WMP implementation, the volumetric reduction requirements will be effectively rendered unenforceable.¹¹² The Petitioners did not previously raise this contention to the Los Angeles Water Board.

The Los Angeles Water Board disagrees. As noted in Section VI.C.a of the Los Angeles County MS4 Permit:

A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee’s compliance with provisions pertaining to applicable interim water quality based effluent limitations and interim receiving water limitations in Part VI.E. and Attachments L-R for the pollutant(s) addressed by the approved Watershed Management Program or EWMP.

Therefore, if a Permittee failed to meet a volumetric reduction milestone, that Permittee would have to demonstrate compliance with provisions pertaining to applicable interim water quality-based effluent limitations and interim receiving water limitations outside of the WMP’s alternative compliance pathway—otherwise be subject to enforcement. In other words, if a Permittee failed to meet a volumetric reduction milestone, the WMP Group would not be able to use the alternative compliance pathway for achieving receiving water limitations that is provided through WMP implementation.

The Los Angeles Water Board disagrees with the assertion that the Lower San Gabriel River WMP is unenforceable and its deadlines are conditioned on funding. It is true that the WMP Group discusses funding difficulties in their final WMP. However, there is no language in the WMP that conditions milestones as “contingent on funding” in the pages referenced in the Addendum.

Section 5, “Compliance Schedule” of the Lower San Gabriel River WMP states:

Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible.¹¹³

Section 6, “Financial Strategy” of the Lower San Gabriel River WMP states:

Financing the implementation of the Lower SGR Watershed Management Program is the greatest challenge confronting the Watershed Group. In the absence of stormwater utility fees, the Participating Agencies have no dedicated revenue stream to pay for implementation of the Watershed Management

¹¹¹ See Addendum, p. 20.

¹¹² *Ibid.*

¹¹³ See Revised Watershed Management Program, pg. 5-1 (Section 25, RB-AR14641).

Program. In addition to current uncertainties associated with costs and funding, there are multiple uncertainties associated with future risks. The first TMDL compliance dates for the Lower SGR Watershed Group will be the interim metals milestones of 2017, 2020, and the final compliance date of September 30, 2026. Thus, there will be many deadlines that must be met despite limited resources. Member Agencies will need to set priorities and seek funding in order to meet the various compliance deadlines.¹¹⁴

The above statements are a statement of the reality that the Permittees of the WMP face with respect to funding stormwater-related projects. This reality has been echoed by many other (if not all) Permittees. This reality, however, is not a contingency. If a Permittee is not compliant with its WMP, then it will be subject to enforcement for any violations of applicable effluent limitations or receiving water limitations. The WMP Group's statements of concern do not constitute built-in mechanisms for WMP milestone date and compliance deadline extensions. If the WMP Group would like an extension for a schedule contained in its WMP, there are explicit provisions outlined in the Los Angeles County MS4 Permit through which Permittees may request extensions of WMP milestone dates and compliance deadlines.

Section VI.C.6.a of the Permit outlines that, with the exception of final compliance deadlines established in a TMDL, a WMP Group may request extensions of deadlines for achievement of interim milestones and final compliance deadlines:

Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii.

Additionally, the Los Angeles County MS4 Permit's Adaptive Management Process allows for the establishment of new compliance deadlines and interim milestones, as noted in Section VI.C.8.a.ii:

Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.

These modifications in the Adaptive Management must go through the process outlined in Section VI.C.8.a.iii of the Los Angeles County MS4 Permit: "Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections."

¹¹⁴ See Revised Watershed Management Program, pg. 6-1 (Section 25, RB-AR14667).

The above provisions are the mechanisms outlined in the Permit for which the Lower San Gabriel River WMP Group may extend the milestones listed in its WMP. As can be seen in the provisions, these mechanisms require the action of the Los Angeles Water Board's Executive Officer. However, none of these described actions have taken place.

In its April 28, 2015 conditional approval letter, the Los Angeles Water Board explicitly expressed to the Lower San Gabriel WMP Group how it will determine WMP compliance:

Pursuant to Part VI.C.6 of the LA County MS4 Permit and Part VII.C.6 of the Long Beach MS4 Permit, the Permittees of the LSGR WMG shall begin implementation of the approved Watershed Management Program immediately. To continue to be afforded the opportunity to implement permit provisions within the framework of the Watershed Management Program, Permittees must fully and timely implement all actions per associated schedules set forth in the approved Watershed Management Program regardless of any contingencies indicated in the approved Watershed Management Program (e.g., funding) unless a modification to the approved Watershed Management Program, including any extension of deadlines where allowed, is approved by the Los Angeles Water Board pursuant to Part VI.C.6.a or Part VI.C.8.a.ii-iii of the LA County MS4 Permit, and/or Part VII.C.6 or Part VII.C.8.b-c of the Long Beach MS4 Permit. The Los Angeles Water Board will determine the LSGR Permittees' compliance with the Watershed Management Program on the basis of the compliance actions and milestones included in the Watershed Management Program, including, but not limited to, the following:

- Pollutant Reduction Plan to Attain Interim & Final Limits (Section 5.4)
- Nonstructural Best Management Practices Schedule (Section 5.1)
- Table 3-2 New Fourth Term MS4 Permit Nonstructural MCMs (Cities only) and NSWDM Measures (Section 3.2.4)
- Table 3-5 Nonstructural TCMs (Section 3.4.1)
- Proposition 84 Grant Award LID BMPs (Section 5.2)
- Structural Best Management Practice Schedule (Section 5.3)
- RAA Attachment B: Detailed Jurisdictional Compliance Tables

Pursuant to Parts VI.C.3 and VI.E.2.d.i.(4)(a) of the LA County MS4 Permit, the LSGR Permittees' full and timely compliance with all actions and dates for their achievement in their approved Watershed Management Program shall constitute compliance with permit provisions pertaining to applicable WQBELs/WLAs in Part VI.E and Attachments N and P of the LA County MS4 Permit. Further, per Part VI.C.2.b of the LA County MS4 Permit and Part VII.C.2.e of the Long Beach MS4 Permit, the LSGR Permittees' full compliance with all requirements and dates for their achievement in their approved Watershed Management Program constitutes compliance with the receiving water limitations provisions of Part V.A of the LA County MS4 Permit and Part VI.A of the Long Beach MS4 Permit for the specific waterbody-pollutant combinations addressed by their approved Watershed Management Program.

If the Permittees in the LSGR WMG fail to meet any requirement or date for its achievement in the approved Watershed Management Program, which will be demonstrated through the LSGR WMG's Annual Reports and program audits (when conducted), the Permittees in the LSGR WMG shall be subject to the

baseline requirements of the LA County MS4 Permit and the Long Beach MS4 Permit, including demonstrating compliance with applicable receiving water limitations and TMDL-based WQBELs/WLAs through outfall and receiving water monitoring. See Parts VI.C.2.c and VI.E.2.d.i.(4)(c) of the LA County MS4 Permit, and Parts VII.C.2.f and VIII.E.1.d.iii of the Long Beach MS4 Permit.¹¹⁵

The Los Angeles Water Board understands the Petitioners' concerns about the potential for multiple extensions of interim milestones and compliance deadlines. However, given that extensions require affirmative approval by the Los Angeles Water Board's Executive Officer and are subject to a 30-day public comment period, this concern does not apply to the Los Angeles Water Board's approvals of the nine WMPs. As approved, these nine WMPs contain finite and enforceable interim milestones and compliance deadlines to measure progress. The State Water Board addressed this concern when it reviewed the Los Angeles County MS4 Permit. The State Water Board noted in its order upholding the Permit: "...Permittees cannot rely on the certainty of a deadline extension, and Permittees have a strong incentive to implement control measures that will in fact get them to compliance by the established deadline."¹¹⁶ The Los Angeles Water Board agrees with this point. Further, any potential for extensions of the deadlines in the WMPs would be addressed, upon request, at a later date and based on fact-specific evidence at the time of the request. But the mere potential for extensions in the future is not cause to deny a WMP.

B. Contentions Related to the Lower Los Angeles River WMP

In the Addendum, the Petitioners contend that the Lower Los Angeles River WMP has four significant shortcomings, which mirror some of those identified by the Petitioners for the Lower San Gabriel River WMP: 1) no clear schedule to demonstrate that compliance will be achieved "as soon as possible," 2) no commitment or demonstration that receiving water limitations for pollutants not addressed by TMDLs will be achieved, 3) insufficient specificity with regard to structure [sic] and non-structural BMPs, and 4) unenforceable and contingent volumetric reduction targets. Petitioners previously raised the first three of these contentions, while the fourth contention was newly raised in the Addendum.

1. Response to Contentions 1 and 2 Regarding Compliance Schedules and Attainment of RWLs

These contentions were previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff's *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower Los Angeles River Responses 3 and 4*.¹¹⁷

¹¹⁵ See Watershed Management Program Approval with Conditions, pgs. 4-5 (Section 25, RB-AR15522 – 15523).

¹¹⁶ State Water Board Order WQ 2015-0075 (Los Angeles County MS4 Permit), p. 36 (Section 1, RB-AR599).

¹¹⁷ Exhibit A, Attachment 2, pgs. 14-15.

2. Response to Contention 3 Regarding Insufficient Specificity with Regard to Structural and Non-Structural BMPs

This contention was previously raised by Petitioners in their Petition. As part of its proceedings on the Petition, the Los Angeles Water Board responded to the contention in the *Staff Response to Petitioners' Detailed Technical Comments*.¹¹⁸

3. Response to Contention 4 Regarding Unenforceable and Contingent Volumetric Reduction Targets

This contention was newly raised by the Petitioners in the Addendum and is identical to the sixth contention raised in regard to the Lower San Gabriel River WMP above. The response to this contention is the same as that given in Section VI.A.5 above.

C. Contentions Related to the Los Angeles River Upper Reach 2 WMP

In their Addendum, the Petitioners allege that the Los Angeles River Upper Reach 2 WMP has: 1) an inadequate RAA, receiving water quality data, model calibration, and verification, 2) no strategy to comply with interim water quality-based effluent limitations, 3) an inadequate and undefined adaptive management process, and 4) no enforceable commitment to meeting interim milestones and final deadlines.

1. Response to Contention 1 Regarding Inadequate RAA

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff's *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Los Angeles River Upper Reach 2 Response 10*.¹¹⁹

In further response to this contention raised again by the Petitioners in their Addendum, the Los Angeles River Upper Reach 2 WMP Group uses the Loading Simulation Program in C++ (LSPC), which is a module contained in WMMS, to calculate the baseline loads and allowable loads from the WMP area. These two loads are then used to establish target load reductions. The Group uses SBPAT to determine an area within the WMP jurisdiction that needs to be addressed through implementation of distributed or parcel scale structural BMPs, such that the WMP Group will meet its target load reductions.¹²⁰

As stated in Section III.A.1 above, model “calibration” refers to the process of adjusting an existing model—such as LSPC and SBPAT—so that the model’s outputs more accurately represent the system being modeled. The LSPC module contained in WMMS is already calibrated for the geographic area of Los Angeles County, which includes the area covered by the Los Angeles River Upper Reach 2 WMP. This calibration includes both a:

- Hydrology Calibration – so that the flows rates predicted by the model matches actual measured flow rates; and

¹¹⁸ Exhibit A, Attachment 1, pages 2-3.

¹¹⁹ Exhibit A, Attachment 2, pgs. 11-12.

¹²⁰ See WMP RAA Models & Data (Section 8, RB-AR1931 – 1933).

- Pollutant Concentration Calibration – so that the concentrations of pollutants in stormwater predicted by the model matches actual measured pollutant concentrations.

The hydrological calibration for the Los Angeles River Watershed conducted in WMMS includes data from 30 stream gauge locations, including seven within the Los Angeles River watershed. Of these seven, one is located downstream of the Los Angeles River Upper Reach 2 WMP area and six are located at various points upstream. Calibration of WMMS was described in Section III.A.1. The Los Angeles River Upper Reach 2 WMP relies on WMMS' calibration of the LSPC model.

i. Compatibility between LSPC and SBPAT

Since LSPC/WMMS is used to establish the target load reductions for the Los Angeles River Upper Reach 2 WMP, while SBPAT is used to determine the structural BMPs that will be implemented to comply with target load reductions, it is necessary to demonstrate how compatible the two modeling systems are to each other. To demonstrate this, the WMP Group adjusted the SBPAT model so that the calculated runoff volumes were within 10% of the LSPC-predicted runoff volumes.¹²¹

ii. Comparison of EMCs

For most pollutants, LSPC employs land use and pollution specific Event Mean Concentrations (EMCs), which are transformed by “build up/wash off” functions. For fecal coliforms, LSPC employs land use specific EMCs. These were then calibrated against observed monitoring data from mass emissions monitoring stations.

For SBPAT, monitoring data was transformed to log-normal mean and standard deviation EMC statistics.¹²²

In Section 4.1.3.3, the WMP Group includes a comparison of land use EMCs between LSPC and SBPAT. The Group notes, “[t]o translate between LSPC determined baseline pollutant loads and SBPAT BMP derived load reductions, total load reductions were expressed as a percentage of critical condition baseline loads.” The WMP Group rationalizes that:

even if specific baseline loads differ between the two models, the relative reduction in loads, resulting from BMP implementation, are comparable. Furthermore, the retention basins used in LSPC and most SBPAT implementation BMPs, rely on reducing runoff volume to achieve pollutant load reductions. Therefore, the effect on loads, relative to baseline loads, is similar, even if analyzed using differing EMC statistics.¹²³

In summary, the WMMS and SBPAT contain sufficient data on local precipitation, hydrology, and water quality, including land use specific data, and were appropriately calibrated given available data, to provide the required reasonable assurance that the control measures proposed in the Los Angeles River Upper Reach 2 WMP will lead to the achievement of water quality standards. The Los Angeles Water Board concluded that the RAA is a reasonable and robust starting point at this stage of WMP implementation.

¹²¹ See Table 4-2 on pg. 89 of the Final Watershed Management Program (Section 22, RB-AR6434).

¹²² See Table 4-3 on pg. 90 of the Final Watershed Management Program (Section 22, RB-AR6435).

¹²³ Final Watershed Management Program (Section 22, RB-AR6424).

2. Response to Contention 2 Regarding Lack of a Strategy to Comply with Interim WQBELs

This contention was previously raised by Petitioners in their Petition. As part of its proceedings on the Petition, the Los Angeles Water Board responded to the contention in the *Staff Response to Petitioners' Detailed Technical Comments*, which discusses how the WMP Group demonstrates that its phased BMP implementation will meet interim water quality-based effluent limitations for metals and bacteria and includes a discussion explaining that no nitrogen reduction is required.¹²⁴

3. Response to Contention 3 Regarding Inadequate Adaptive Management Process

This contention was previously raised by Petitioners in their March 25, 2015 letter commenting on the revised WMPs. As part of its proceedings on the Petition, the Los Angeles Water Board previously responded to the contention in Board staff's *Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Los Angeles River Upper Reach 2 Response 6*.¹²⁵ Adaptive management is a well understood approach that is used in many fields, including watershed and stormwater management. The Permit provides a general structure, timeline and process for adaptive management of WMPs.¹²⁶ In reviewing the draft WMPs, Board staff found that Permittees' descriptions of the adaptive management process largely mirrored the description in the Permit; therefore, the Executive Officer provided additional direction in his approvals of the WMPs with regard to expectations as to the scope and focus of adaptive management.¹²⁷

4. Response to Contention 4 Regarding a Lack of Commitment to Meeting Interim Milestones and Final Deadlines

The Petitioners' allege that the Los Angeles River Upper Reach 2 WMP "fails to commit the dischargers to anything, and instead conditions every element of the program on unidentified funding, permitting, government approvals, and other contingencies."¹²⁸ This specific contention was not previously raised in this manner to the Los Angeles Water Board, either in comment letters or in the Petition.

In response, the Los Angeles River Upper Reach 2 WMP Group's compliance schedule is largely based on TMDL implementation milestones, which the WMP Group explicitly lists in Table 1-6 (pg. 18), Section 4.3 (pg. 96), and Appendix C of the final WMP.¹²⁹ The WMP Group incorporates these applicable TMDL compliance dates into its RAA analysis as it states in Section 4.6 (pg. 113) of its final WMP: "[The RAA] indicates that for each pollutant of concern, the load reductions anticipated by the average cumulative BMP implementation strategy will exceed the final total load reductions, and the phased BMP load reductions also meet the interim compliance targets (i.e., 50% of final metal TLRs by 2024)" [emphasis added].¹³⁰

¹²⁴ Exhibit A, Attachment 1, pgs. 20, 23-24 (Section 32, RB-AR18249, 18252 – 18253).

¹²⁵ Exhibit A, Attachment 2, pg. 7 (Section 32, RB-AR18263).

¹²⁶ See Section 1 (RB-AR66 – 67).

¹²⁷ See Section 25 (RB-AR6334 – 6335).

¹²⁸ See Addendum, pgs. 10-12.

¹²⁹ See Section 22 (RB-AR6363, 6441, 6499 – 6504).

¹³⁰ See Section 22 (RB-AR6458).

Furthermore, the WMP Group uses a limiting pollutant approach, as alluded to in Section 4.5 (pg. 113): “Bacteria was found to be the driving (or limiting) pollutant for the Los Angeles River drainage area, and zinc was the driving pollutant for the Rio Hondo drainage area”.¹³¹

The language in the WMP that appears to “condition” implementation schedules is more or less restatements of provisions already contained in the Permit. For example, the WMP Group notes that dates are “subject to the procurement of grants or other financing support” in Section 5 (pg. 116)¹³²:

Interim and final compliance dates in the LAR Metals and Bacteria TMDLs are the primary drivers for the LAR UR2 WMA RAA and WMP Plan implementation schedule. The dates identified in this WMP Plan are subject to the procurement of grants or other financing support commensurate with the existing and future fiduciary responsibilities of the Permittees. They may furthermore be adjusted based on evolving information developed through the iterative adaptive management process identified in the 2012 MS4 Permit or similar Parts within future MS4 Permits.

However, the above ultimately depends on the Adaptive Management Process provisions of the Los Angeles County MS4 Permit as outlined in Section VI.C.8.a.ii:

Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.

Furthermore, the Adaptive Management Process does not automatically allow Permittees to change deadlines. Changes have to go through the Los Angeles Water Board Executive Officer as noted in Section VI.C.8.a.iii of the Los Angeles County MS4 Permit: “Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.”

Another section of the Los Angeles River Upper Reach 2 WMP that has similar language is Section 5.1 (pg. 116)¹³³, which states:

The WMP, including the schedule aspect, will be updated through the adaptive management process; to that extent, the implementation schedules identified are tentative *unless determined as a date certain associated with specific TMDL provisions. Any LAR UR2 WMA WMP schedule date extensions must be approved by the Los Angeles Water Board’s Executive Officer pursuant to Part VI.C.6.a or Part VI.C.8.a.ii-iii of the 2012 MS4 Permit.*

¹³¹ *Ibid.*

¹³² See Section 22 (RB-AR6461).

¹³³ See Final Watershed Management Program (Section 22, RB-AR6461) [emphasis added].

The WMP Group's statement that the implementation schedules identified are "tentative" in this context are based on the WMP Group's understanding of the Adaptive Management Process and is ultimately immaterial with respect to how the Los Angeles Water Board views the WMP deadlines—i.e. the Los Angeles Water Board treats the WMP Implementation Schedule contained in the final approved WMP as the schedule the Group must follow unless an extension of the schedule is approved in accordance with the Los Angeles County MS4 Permit.

If the WMP Group is not approved for any extension and the WMP Group fails to follow its implementation schedule then it will not be able to use the alternative compliance pathway for achieving receiving water limitations that is provided through WMP implementation.

In its April 28, 2015 conditional approval letter,¹³⁴ the Los Angeles Water Board explicitly expressed how it will determine WMP compliance to the Los Angeles River Upper Reach 2 WMP Group:

Pursuant to Part VI.C.6 of the LA County MS4 Permit, the Permittees of the LAR UR2 WMG shall begin implementation of the approved WMP immediately. To continue to be afforded the opportunity to implement permit provisions within the framework of the WMP, Permittees must fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP (e.g., funding and purported reservation of rights) unless a modification to the approved WMP, including any extension of deadlines where allowed, is approved by the Los Angeles Water Board pursuant to Part VI.C.6.a or Part VI.C.8.a.ii-iii. The Los Angeles Water Board will determine the LAR UR2 WMG Permittees' compliance with the WMP on the basis of the compliance actions and milestones included in the WMP, including, but not limited to, the following:

- Section 3 "Watershed Control Measures," including Section 3.3 "Proposed Control Measures;"
- Table 3-1 "LAR Metals TMDL Jurisdictional Group 2 Non-Structural BMPs Phased Implementation Plan;"
- Table 3-8 "Potential Non-Structural BMP Enhanced Implementation Efforts;"
- Table 4-10 "LID Street Required Tributary area by LAR UR2 WMA Permittee;"
- Tables 4-17 to 4-20, which present load reductions associated with non-structural BMPs, regional BMPs, and distributed BMPs;
- Table 5-1 "Tentative Control Measure Implementation Schedule" which establishes the implementation dates for non-structural BMPs, regional BMPs, and distributed BMPs; and
- Additional compliance actions and milestones established in response to Conditions 1, 2, 8 and 9, above.

Pursuant to Parts VI.C.3 and VI.E.2.d.i.(4)(a) of the LA County MS4 Permit, the LAR UR2 WMG Permittees' full and timely compliance with all actions and dates for their achievement in their approved WMP shall constitute compliance with permit provisions pertaining to applicable WQBELs/WLAs in Part VI.E and Attachment O of the LA County MS4 Permit. Further, per Part VI.C.2.b of the LA County MS4 Permit, the LAR UR2 WMG Permittees' full compliance with all

¹³⁴ See Watershed Management Program Approval with Conditions, pg. 5 (Section 22, RB-AR6333).

requirements and dates for their achievement in their approved WMP constitutes compliance with the receiving water limitations provisions of Part V.A of the LA County MS4 Permit for the specific waterbody-pollutant combinations addressed by their approved WMP.

If the Permittees in the LAR UR2 WMG fail to meet any requirement or date for its achievement in the approved WMP, which will be demonstrated through the LAR UR2 WMG's Annual Reports and program audits (when conducted), the Permittees in the LAR UR2 WMG shall be subject to the baseline requirements of the LA County MS4 Permit, including demonstrating compliance with applicable receiving water limitations and TMDL-based WQBELs/WLAs through outfall and receiving water monitoring. See Parts VI.C.2.c and VI.E.2.d.i.(4)(c).

Furthermore, it should be emphasized that under the Los Angeles County MS4 Permit, the WMP Group cannot request an extension of final compliance deadlines established in a TMDL as stated in Section VI.C.6.a of the Permit:

Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii.

For these reasons, the stated contention is not a specific issue of the WMP as approved. The WMP Group is ultimately relying on provisions of the Los Angeles County MS4 Permit to provide scheduling flexibility; however, these permit provisions themselves are not automatic, but rather have defined processes that must be followed.

VII. CONCLUSION

The Los Angeles Water Board's approvals of the nine WMPs were based on thorough and consistent reviews conducted by a multidisciplinary team of engineers, scientists, modelers, and planners. The Board's reviews and approvals were informed by significant input from Los Angeles Water Board staff, USEPA Region IX staff, and stakeholder input, including the Petitioners. The Los Angeles Water Board determined that the WMPs were based on well accepted technical approaches and met the requirements of the Permit for an approvable WMP.

As the State Water Board is aware from its prior proceedings, the 2012 Los Angeles County MS4 Permit is a paradigm shift from prior MS4 permits in the Los Angeles Region and throughout the State, and is requiring new types of technical analysis and a heightened level of long-term strategic planning on the part of Permittees and the Los Angeles Water Board. For some of the WMPs, the Permittees noted that there were gaps in available monitoring data, effectiveness of best management practices, and other pollutant sources that would need to be addressed through the adaptive management process to bolster the WMPs. Under the adaptive management provisions, many of the assumptions used in developing these WMPs will be reviewed and updated every two years, and the programs will be adapted to the new data that are collected. Given that the monitoring data that were available to develop the WMPs are data

that were collected under the prior MS4 permit and are very limited geographically, the monitoring programs and adaptive management process will fill in those data gaps. Ultimately, these WMPs are putting permittees on a clear, finite, and transparent path toward compliance with the receiving water limitations and water quality-based effluent limitations to which they are subject in the Los Angeles County MS4 Permit.

During the Board's consideration of the Petition, Charles Stringer, Chair of the Los Angeles Water Board, stated: "[I]t's a cliché, but I'm a big believer in not letting perfection get in the way of good. And I think these plans are good."¹³⁵ In adopting the Los Angeles County MS4 Permit, it was not the Board's intent to create an impossible situation whereby, due to lack of data, a WMP could not be approvable within the specified timeframe in the Permit. In addition, the Permit specifies a focus on deadlines during the current term of the Permit (through 2017) and the next permit term, recognizing that project details would be fewer for later implementation phases. Through the adaptive management program and updates to the WMP, the Permittees are expected to add details to later implementation phases as those phases near, and update their RAA when directed by the Executive Officer, and at least by June 30, 2021.

When the State Water Board upheld the Los Angeles County MS4 Permit, the State Water Board members recognized the significant water quality benefits, among other benefits, that could result from the implementation of WMPs and EWMPs, as well as the effort the new watershed based programs would require of Permittees. In upholding the alternative compliance option to develop and implement WMPs, the State Water Board sent a clear message that it wanted to provide an opportunity to give this alternative compliance option a chance. In light of this, and the responses provided herein, the Los Angeles Water Board requests that the State Water Board deny the Petitioners' requests to: 1) invalidate the Los Angeles Water Board Executive Officer's April 28, 2015 conditional approvals and deny all nine WMPs; 2) invalidate the Los Angeles Water Board's action on September 10, 2015 to ratify its Executive Officer's final approvals of the Los Angeles River Upper Reach 2 WMP, Lower San Gabriel River WMP, and Lower Los Angeles River WMP, and 3) remand the matter to the Los Angeles Water Board for further proceedings. In response to the contentions in the Petition and Addendum, the Los Angeles Water Board urges the State Water Board to uphold the Los Angeles Water Board's actions in their entirety, retaining the final approvals of all nine WMPs.

¹³⁵ Certified Transcript for September 10, 2015, p. 362, lines 16-18 (Section 33, RB-AR18795).

Figure 1 - WMP Development Activities Timeline

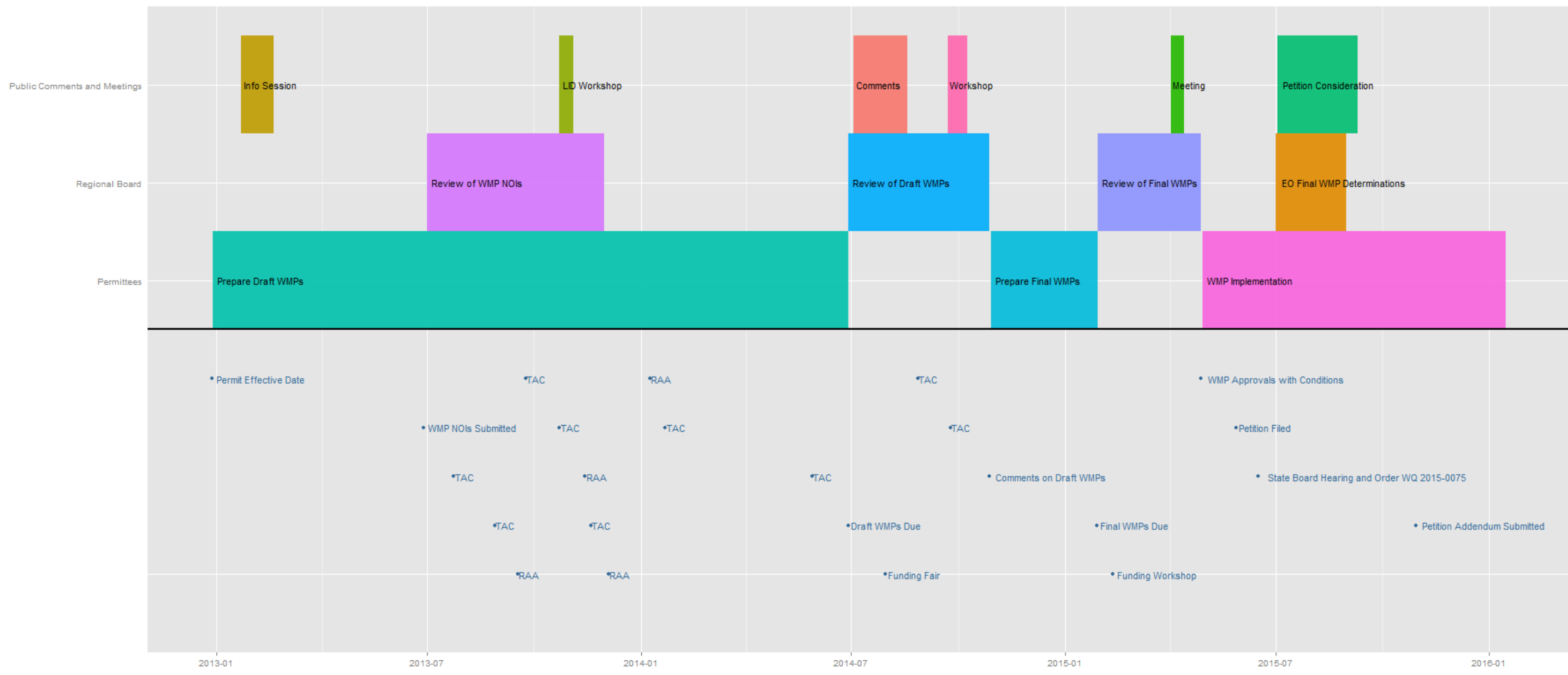


EXHIBIT A

REGIONAL BOARD STAFF'S RESPONSE TO PETITION FOR REVIEW OF THE EXECUTIVE OFFICER'S APPROVAL, WITH CONDITIONS, OF NINE WMPs PURSUANT TO THE LOS ANGELES COUNTY MS4 PERMIT (ORDER NO. R4-2012-01750)

*** Includes: Main Response Matrix, Attachment 1 (Staff Response to Petitioners' Detailed Technical Contentions in its Memorandum of Points and Authorities and Exhibit D), and Attachment 2 (Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised WMPs)**

**Regional Board Staff's Response to Petition for Review of the Executive Officer's approval, with conditions,
of nine Watershed Management Programs (WMPs)
pursuant to the Los Angeles County MS4 Permit (Order No. R4-2012-0175)**

Contention No.	Summary of Contention	Staff Response
1	<p>In reviewing the Executive Officer's decision, both the Regional and State Boards must exercise their independent judgment as to whether the Executive Officer's action is reasonable. (<i>See Stinnes-Western Chemical Corp.</i>, State Board WQ Order No. 86-16 (1986).) The Executive Officer's action constitutes an "[a]buse of discretion...if [he] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Cal. Civ. Proc. Code § 1094.5(b); <i>see also Zuniga v. Los Angeles County Civil Serv. Comm'n</i> (2006) 137 Cal.App.4th 1255, 1258 (applying same statutory standard).) "Where it is claimed that the findings are not supported by the evidence, . . . abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (Cal. Civ. Proc. Code § 1094.5(c).)</p>	<p>No specific standard of review applies to the Regional Board's review of the Executive Officer's action to approve, with conditions, nine WMPs. The Regional Board is not acting as an appellate body in this matter. Since the Executive Officer acted pursuant to delegated authority on behalf of the Regional Board, the Regional Board is, in essence, being asked to reconsider its own action. The Regional Board is not required to determine whether the Executive Officer's action constituted an abuse of discretion. Rather, in this instance, the Regional Board may consider whether the Executive Officer's action to approve the WMPs, with conditions, was appropriate and proper. At the conclusion of its review, the Regional Board may, for each of the nine WMPs, either: 1) ratify the Executive Officer's approval, 2) overturn the Executive Officer's approval, or 3) conduct further proceedings on the petition as determined by the Board. If, in its review, the Regional Board makes new findings of fact, they must be supported by a preponderance of the evidence as the Board would be acting as the initial trier of fact.</p> <p>Further, the standard of review cited by the Petitioners in California Code of Civil Procedure section 1094.5 does not apply to the Regional Board's consideration of the petition. That section applies when a court is reviewing a regional water board's and/or State Water Board's action from an adjudicatory proceeding.</p>
2.1	<p>The Executive Officer improperly acted outside the scope of delegated authority in "conditionally" approving the WMPs because the only authority explicitly delegated to the Executive Officer by the</p>	<p>The Executive Officer acted within the scope of his delegated authority in approving the WMPs with conditions. Pursuant to Water Code section 13223, a regional water board has the authority to delegate any of its powers and duties, with limited</p>

Contention No.	Summary of Contention	Staff Response
	<p>Regional Board in the Permit was to approve or deny the WMPs. Such action, therefore, constitutes an abuse of discretion. (Cal. Water Code § 13223(a); <i>see also</i> California Regional Water Quality Control Board Los Angeles Region (April 11, 2014), Resolution No. R14-005 amending Resolution No. R10-009, Delegation of Authority to the Executive Officer.)</p>	<p>exceptions, to its Executive Officer. The Regional Board has done so in a resolution entitled “Delegation of Authority to Executive Officer,” which is periodically updated by the Board, most recently in 2014. (Resolution No. R14-005.) In its delegation, the Regional Board has delegated “to its Executive Officer all powers and duties to conduct and to supervise the activities of the Regional Board,” including, but not limited to, “exercising any powers and duties of the Regional Board.” The Regional Board also specifically delegated to the Executive Officer, in Part VI.C.4 (Table 9) of the Permit, the authority to “approve or deny” a final WMP on behalf of the Regional Board.</p> <p>Petitioners assert that the Executive Officer acted beyond his delegated authority because the Regional Board did not specifically authorize the Executive Officer to “conditionally approve” the WMPs. The Petitioners also appear to assert that, even if the Regional Board were to have considered approval of the WMPs itself, it also would not have had any legal authority to approve a WMP with conditions, and could have only provided an unconditional approval or denied the WMP in its entirety. Petitioners are interpreting the delegation of authority to the Executive Officer literally and narrowly, which is not supported by the terms of the Permit or the practice of this Regional Board. While the Permit says that the Regional Board, or the Executive Officer on behalf of the Regional Board, must approve or deny the final WMP by a time certain, the Permit does not dictate that any approvals must be unconditional or include any other language limiting the discretion of the Board in the specific manner of approving a WMP. Thus, the Regional Board did not limit itself, or the Executive Officer, to only strictly approving or denying a WMP.</p> <p>The Executive Officer’s action to approve, with conditions, the nine WMPs was an action within the broad scope of authority</p>

Contention No.	Summary of Contention	Staff Response
		<p>delegated to the Executive Officer by the Regional Board in Resolution No. R14-005, as well as within specific delegated authority in the Permit. In Part VI.C of the Permit, the Regional Board provides the Executive Officer with broad authority pertaining to administering the WMP/EWMP provisions on behalf of the Board, including authority to approve or deny WMPs (Part VI.C.4.c), approve or deny requests for modifications to certain deadlines in a WMP/EWMP (Part VI.C.4.g & Part VI.C.6.a), approve or deny integrated monitoring programs and coordinated integrated monitoring programs (Part VI.C.7), require modifications and updates to a WMP/ EWMP (Part VI.C.8.b.i), and review and approve modifications to WMPs/EWMPs (Part VI.C.8.b.i). Unless specifically limited, delegated authority is broadly construed. (see <i>County of San Diego v. Bowen</i> (2008) 166 Cal.App.4th 501, 509-510 [California Legislature's broad delegation of authority to the Secretary of State to regulate voting systems includes the authority to condition approval of the use of particular voting machines on certain procedural safeguards, including postelection tallies]).</p> <p>In addition, a well-established principle of administrative law provides that an agency's authority to approve or disapprove inherently includes the authority to approve with conditions. The petitioners in <i>Connecticut Fund for the Environment, Inc. v. EPA</i> (2d Cir. 1982) 672 F.2d 998, made a very similar argument to what Petitioners assert in this matter. In that case, an environmental group asserted that USEPA could not conditionally approve a state implementation plan under the Clean Air Act because the statute required USEPA to "approve or disapprove" the plan within four months of submission. Under USEPA's conditional approval procedures, a plan that is in substantial compliance with the Act may be conditionally approved as satisfying the Act if the state provides strong</p>

Contention No.	Summary of Contention	Staff Response
		<p>assurances that the remaining minor deficiencies will be remedied within a specified short period. (<i>id.</i> at p. 1005.) The environmental group argued that the literal “approve or disapprove” language and the absence of any mention of conditional approvals in the Clean Air Act precluded USEPA’s conditional approval. (<i>id.</i> at p. 1006.) The Court of Appeal for the Second Circuit declined to construe the Act as allowing only outright approval or disapproval of state plans. The Court held: “But this Court has held that an agency’s power to approve conditionally is inherent in the power to approve or disapprove.” (<i>ibid.</i>) The Court further held: “[T]he power to condition ... approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove. We would be sacrificing substance to form if we held invalid any conditional approval but affirmed an unqualified rejection accompanied by an opinion which explicitly stated that approval would be forthcoming if modifications were made.” (<i>ibid.</i>) The Court further noted that a conditional approval offers administrative agencies a measured course that may be more precisely tailored to particular circumstances than the all-or-nothing choice of outright approval or disapproval. (<i>ibid.</i> [citing <i>U.S. v. Chesapeake & Ohio Ry.</i>, 426 U.S. 500, 514 [involving the Interstate Commerce Commission’s powers under the Interstate Commerce Act]]). Lastly, the Court stated that the conditional approval mechanism, in the context of the Clean Air Act, gave USEPA the necessary flexibility to work more closely with the states and that it generally deferred to USEPA’s choice of methods to carry out its difficult and complex job as long as that choice is reasonable and consistent with the Act. (<i>ibid.</i>)</p> <p>Here, the authority to conditionally approve is a necessary and proper exercise of the Executive Officer’s power to accomplish the purpose for which the Regional Board delegated its authority</p>

Contention No.	Summary of Contention	Staff Response
		<p>in the Permit. In addition, a permitting agency is given substantial deference by appellate bodies in interpreting its own permits. As such, it is proper and reasonable for the Regional Board to interpret the Executive Officer's delegated authority to provide the flexibility of an approval with conditions to fulfill the goals of the Permit. Using his discretion, the Executive Officer determined that denial of the WMPs on the basis of needing the types of revisions described below was not warranted and could be appropriately addressed within a specified short period through individually tailored approvals with conditions to address these items.</p> <p>USEPA also utilizes procedures that provide for conditional approvals under the Clean Water Act. For example, in section 6.2.1 of its Water Quality Standards Handbook- Chapter 6: Procedures for Review and Revision of Water Quality Standards (40 CFR 131 - Subpart C), USEPA specifically allows the use of conditional approvals in carrying out its review of a state's water quality standards under Clean Water Act section 303(c). This is despite any express "conditional approval" language in section 303(c).</p> <p>Moreover, the Executive Officer's action conditionally approving the WMPs is wholly consistent with a long-standing practice of this Regional Board to approve submitted documents with conditions when deemed appropriate. When appropriate, the Executive Officer regularly conditionally approves submitted documents on behalf of the Regional Board, including monitoring plans, TMDL work plans, permit workplans, and site cleanup workplans and remedial action plans. The Executive Officer's authority to approve such documents is either pursuant to the Executive Officer's general delegation or in Regional Board adopted permits or regulations. For example, TMDLs adopted by the Regional Board as Basin Plan amendments</p>

Contention No.	Summary of Contention	Staff Response
		<p>often authorize the Executive Officer to “approve” TMDL work plans and monitoring plans on behalf of the Board. The Executive Officer has issued numerous conditional approvals of TMDL work plans and monitoring plans over at least the last decade. Like the Permit, these TMDLs do not specify that such approvals must be without conditions.</p> <p>Board staff is not aware of any prior situation where the Petitioners, or any other person/entity for that matter, has challenged the Regional Board Executive Officer's conditional approval of a document. Also, if the delegation to the Executive Officer in the Permit to “approve or deny” a WMP literally only means the Executive Officer was required to approve the WMP without any conditions or deny it in its entirety, such an interpretation could, going forward, impact other Regional Board programs.</p> <p>Other regional water boards, as well as the State Water Board, also routinely issue conditional approvals pertaining to both water quality and water rights matters. This common practice by the Water Boards recognizes that regional water boards and the State Water Board require flexibility to manage their programs efficiently and effectively.</p> <p>Lastly, it should be noted that the Executive Officer also approved, with conditions, three of the nine WMPs pursuant to the City of Long Beach MS4 Permit. This was done pursuant to the same delegation language contained in both the Los Angeles County and City of Long Beach MS4 permits. Yet, the Petitioners do not seek review of the Executive Officer's approval, with conditions, pursuant to the City of Long Beach MS4 Permit. The deadline for Petitioners to seek review has passed and those approvals, with conditions, are final. If the Executive Officer had authority to conditionally approve WMPs</p>

Contention No.	Summary of Contention	Staff Response
		pursuant to the City of Long Beach MS4 Permit, it is unclear why Petitioners would assert that no such authority existed as to the Los Angeles County MS4 Permit.
2.2	Because the nine WMPs, as finally submitted, failed to meet the program development requirements by the designated schedule set forth in the Permit, neither the Regional Board nor the Executive Officer on its behalf could approve the final WMPs. The only course of action available to the Executive Officer pursuant to the Permit was to deny the final WMPs by the April 28, 2015 deadline.	<p>As noted above, neither the Regional Board nor its Executive Officer was limited to only approving the WMPs without conditions or denying them in their entirety. Like the Executive Officer, the Regional Board would have had similar authority to approve the WMPs, with conditions.</p> <p>As discussed below, the Executive Officer determined that the nine WMPs did meet the program development requirements by the designated schedule set forth in the Permit. As such, both the Regional Board, and the Executive Officer on behalf of the Regional Board, could have decided to approve the final WMPs.</p>
2.3	The Executive Officer's conditions were aimed at correcting the WMPs' failures to comply with the Permit requirements and clearly demonstrate that the WMPs should have been properly denied on April 28, 2015.	The Executive Officer's conditions did not generally require fundamental changes to the WMPs. Rather, the conditions largely requested revisions such as providing additional supporting or clarifying information, providing consistency within the WMP, and correcting typographical errors. Some of the conditions were related to lack of detail, particularly for actions/projects to be conducted later in WMP implementation, in future permit cycles, or due to lack of data (e.g., source assessment and model calibration), which can only be remedied with data collection. In the conditional approval letters, the Executive Officer required that Permittees refine and recalibrate the RAA as new data become available. In adopting the Permit, it was not the Board's intent to create an impossible situation whereby, due to lack of data, a WMP could not be approvable within the specified timeframe. In addition, the Permit specifies a focus on deadlines during the current term (through 2017) and next 5-year permit term, recognizing that project details would be fewer for later implementation phases. Through the adaptive

Contention No.	Summary of Contention	Staff Response
		<p>management program and updates to the WMP, the Permittees are expected to add details to later implementation phases as those phases near.</p> <p>Using his discretion, the Executive Officer determined that denial of the WMPs on the basis of needing the types of revisions described above was not warranted and could be appropriately addressed through individually tailored approvals with conditions to address these items. This was particularly in light of the newness of the WMP permit provisions and the significant effort made by the Permittees in developing their WMPs consistent with these provisions. The development of these watershed programs is an accomplishment never before conducted by the Permittees and has required a learning process. In addition, denial of the WMPs on the basis of needing these types of revisions could have delayed timely implementation of the Permit. The Executive Officer determined that it was more beneficial to approve the WMPs with conditions and a short period to address the conditions, such that WMP implementation could begin as soon as possible.</p> <p>Moreover, most of the revised WMPs could have been approved by the Executive Officer without any conditions as the revised WMPs met the requirements of the Permit. However, the Executive Officer chose to approve the WMPs with conditions to ensure that Permittees were fully responsive to the Board's comments on the WMPs.</p> <p>Further, Petitioners assume that all of the Regional Board's comments in its review letters necessarily required a change to be made to the draft WMP or revised draft WMP. In some cases, the Regional Board's comments were addressed without further changes to the WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the</p>

Contention No.	Summary of Contention	Staff Response
		<p>submittals of the revised WMPs themselves. Many Permittees included matrixes with their revised WMPs that summarized how each of the staff's comments on the draft WMP were addressed.</p>
2.4	<p>By conditionally approving the WMPs, the Executive Officer provided Permittees an additional 45 days to comply with the Permit's WMP development requirements and thereby improperly extended the Permit's WMP deadlines. This created yet another process and a new, unauthorized schedule that will only defer compliance with the Permit's RWLs and TMDL-limitations.</p>	<p>The Executive Officer's approvals with conditions did not extend the WMP deadlines or create a new unauthorized schedule in the Permit. The schedule in the Permit remains unchanged. For this contention, the Petitioners appear to assert that the approvals with conditions were not actually approvals at all. This is incorrect. The Executive Officer's April 28, 2015 letters approved the WMPs, conditioned on the Permittees making relatively minor revisions within a short timeframe and by a date certain, and required the Permittees to begin implementation of the approved WMP immediately as required by the Permit.</p> <p>Lastly, the method by which the Executive Officer approved the WMPs does not defer a Permittees' compliance with receiving water limitations and TMDL limitations. To the contrary, the Permittees were instructed to begin implementation of their respective WMPs immediately upon approval. By timely approving the WMPs, and providing a short but reasonable time frame for Permittees to make the relatively minor revisions, the Executive Officer's action ensured that there was no delay in implementation. In addition, additional time to address the imposed conditions does not defer compliance with TMDL or receiving water limitations compliance schedules, as TMDL schedules are not changed by WMPs or the dates by which a WMP is approved. Moreover, the Executive Officer clearly stated in his letters that, in the event that "Permittees fail to meet any requirements or date for its achievement in the approved WMP...the [Permittee] shall be subject to the baseline requirements of the LA County MS4 Permit..."</p>

Contention No.	Summary of Contention	Staff Response
2.5	<p>The conditional approvals left the extension open-ended, specifying that “[t]he Board <i>may</i> rescind this approval if all of the following conditions are not met to the satisfaction of the Board” by June 12, 2015. Thus, the “conditional approvals” left open the possibility that the Executive Officer/Regional Board <i>may further</i> extend the 45-day deadline and issue another round of conditional approvals beyond June 12, 2015. However, the Executive Officer did not have any authority to indefinitely extend the Permit’s deadlines. Therefore, the conditional approvals’ open-ended extensions are a further abuse of discretion.</p>	<p>The conditional approvals did not leave open the possibility that the Executive Officer may further extend the 45-day deadline and issue another round of conditions. The conditional approval letters clearly stated that the Permittees must submit a final WMP addressing the conditions to the Board’s satisfaction by a specific deadline. Nowhere did the Executive Officer indicate that he would consider granting an extension or issue another round of conditional approvals.</p> <p>In addition, this contention is largely moot as the Executive Officer did not, as the Petitioners feared, extend the deadlines or issue another round of conditional approvals. Final WMPs addressing the Executive Officer’s conditions were submitted in May and June 2015. Between July 2015 and August 2015, the Executive Officer determined that the conditions had been satisfied in all nine final WMPs.</p>
3.1	<p>By conditionally approving WMPs – a procedure nowhere provided for in the 2012 MS4 Permit – the Executive Officer improperly modified the 2012 MS4 Permit in violation of the substantive and procedural requirements of state and federal law. The Executive Officer de facto amended the Permit terms, creating a new process, timeline, and set of standards by conditionally approving WMPs without circulation of a draft permit, public notice, fact sheet, or public hearing date, as required by law. (<i>See Environmental Defense Center, Inc. v. EPA</i>, 344 F.3d 832, 853 (9th Cir. 2003); 40 C.F.R. §§ 124.5-124.15; Cal. Water Code Section § 13223(a).)</p>	<p>Because the Executive Officer’s approvals of the WMPs with conditions was within the scope of delegated authority, as explained above, the Permit did not need to be modified or amended to allow the Executive Officer the authority to approve the WMPs with conditions. As such, the Executive Officer’s inclusion of conditions to the approval of the WMPs did not modify the Permit or amend any of its terms by creating a new process, timeline, or set of standards. The terms of the Permit, including procedures and deadlines pertaining to WMP review and approval, did not change. As such, the procedures noted by the Petitioners, including circulation of a draft permit, public notice, fact sheet, or public hearing, were not required prior to the Executive Officer’s action.</p> <p>Prior to the approvals with conditions of the WMPs, Board staff complied with the public review requirements of the Permit, which requires that “all documents submitted to the Regional</p>

Contention No.	Summary of Contention	Staff Response
		<p>Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment." Beginning on July 3, 2014, the Board provided a 46-day public review and written comment period on the draft WMPs. On October 9, 2014, the Board also held a workshop at its regularly scheduled Board meeting to discuss the draft WMPs during which stakeholders and interested persons were provided an opportunity to make oral comments on the draft WMPs to the Board and Executive Officer. In addition, Board staff held a public meeting on April 13, 2015 for Permittees, stakeholders and interested persons to discuss the revised draft WMPs with the Board's Executive Officer and staff. Board members were invited to attend this meeting and several Board members did attend. Throughout the WMP review process, Board staff participated in several meetings, phone calls, and email exchanges with Permittees and interested persons, including Petitioners.</p> <p>Moreover, the WMPs underwent extensive review by Regional Board staff, USEPA Region IX staff, and the public prior to the Executive Officer's action. In conducting its review, Board staff developed a list of review and evaluation questions, which was used to ensure a comprehensive and consistent review of the draft WMPs relative to permit requirements. Each WMP was assigned a lead reviewer, who was supported by TMDL Program staff, including the Board's modeling expert, Dr. C.P. Lai. Lead staff were overseen by the MS4 Unit Chief, Mr. Ivar Ridgeway, and by the Regional Programs Section Chief, Renee Purdy. Additionally, Board staff teamed with USEPA Region IX staff to jointly review the draft WMPs. During the review period, Board staff and USEPA staff held conference calls on a weekly basis to discuss the draft WMPs.</p> <p>On the basis of Board staff's review, USEPA Region IX staff's review, and in consideration of written and oral comments made</p>

Contention No.	Summary of Contention	Staff Response
		<p>by interested persons, the Board sent letters to the Permittees providing comments on the draft WMPs that identified the revisions that needed to be addressed prior to the Board's approval of the WMPs, and directed the Permittees to submit revised draft WMPs addressing the Board's comments by approximately January 28, 2015 for Board review.</p> <p>Petitioners cite <i>Environmental Defense Center, Inc. v. EPA</i> (9th Cir. 2003) 344 F.3d 832, as support for their contention that the Executive Officer's conditional approval of the WMPs amended the terms of the Permit because an approved WMP becomes substantive terms of the Permit. As described above, the Executive Officer's action did not amend the terms of the Permit. Approved WMPs implement the terms of Permit by detailing the specific actions and milestones a Permittee will abide by to achieve compliance with the terms of the Permit. An approved WMP, however, does not amend the terms of the Permit. The terms of the Permit remain unchanged, including the receiving water limitations and water-quality based effluent limitations. Moreover, <i>Environmental Defense Center</i> is not on point. In that case, environmental groups sought judicial review of a USEPA rule mandating that discharges from small MS4s and construction sites be subject to NPDES permitting requirements. Under the rule, small MS4s could seek permission to discharge by submitting an individualized set of BMPs in six specific categories, either in the form of an individual permit application or in the form of a notice of intent to comply with a Phase II general permit. USEPA did not require that permitting authorities review an NOI before a party who submitted the notice of intent was allowed to discharge. The environmental groups asserted that, by allowing permitting authorities to grant dischargers permits based on unreviewed notices of intent, the rule constituted a program of impermissible regulation and failed to provide required avenues of public</p>

Contention No.	Summary of Contention	Staff Response
		<p>participation. (<i>Id.</i> at p. 854.) The Court of Appeal for the Ninth Circuit agreed with the environmental groups in this respect, holding that USEPA failed to require review of notices of intent assuring compliance with Clean Water Act standards and also failed to make notices of intent available to the public. (<i>id.</i> at p. 858.) The Court held: “[S]tormwater management programs that are designed by regulated parties must, in every instance be subject to meaningful review by an appropriate regulatory entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.” (<i>id.</i> at p. 856.)</p> <p>Here, as described above, the WMPs were subject to public review and comment, including at Board and staff level meetings, as well as an opportunity to submit written comments. Petitioners submitted written comments on the draft and revised WMPs. The WMPs also underwent extensive review by Regional Board staff and USEPA Region IX staff to assure compliance with the standards set forth in the Permit. Thus, the WMPs were subject to “meaningful review.”</p>
4.1	<p>The terms of the conditional approvals are inconsistent with Permit requirements and the federal Clean Water Act and therefore establish that the only available course of action for the Executive Officer was to deny the WMPs. Following submission of the initial draft WMPs, Regional Board staff identified numerous and significant failures to comply with Permit requirements and therefore directed Permittees, in writing, to submit revised plans to address the deficiencies. Unfortunately, the revised draft WMPs failed to address virtually all of the identified non-compliance issues. Rather than denying the insufficient WMPs as required by the Permit,</p>	<p>The Executive Officer determined that the nine WMPs, with the conditions imposed, met the WMP permit provisions and the federal Clean Water Act. In addition, as described above, neither the Executive Officer nor the Board itself was limited to only denying the WMPs.</p> <p>Staff disagree that the revised draft WMPs “failed to address virtually all of the identified non-compliance issues.” To the contrary, the Permittees largely addressed all of Board staff’s comments prior to the Executive Officer’s action. However, as previously mentioned, not all of the Regional Board’s comments necessarily required a change to be made to the draft WMP or revised draft WMP. In some cases, the Regional Board’s comments were addressed without further changes to the</p>

Contention No.	Summary of Contention	Staff Response
	<p>however, the Executive Officer approved the WMPs with conditions – conditions that fail to address all of the WMP inadequacies previously cited by Regional Board staff itself. This constitutes an abuse of discretion.</p>	<p>WMPs, such as explanations provided by the Permittees during phone calls and/or meetings and/or in the submittals of the revised WMPs themselves. Many Permittees included matrixes with their revised WMPs that summarized how each of the staff's comments on the draft WMP were addressed.</p> <p>The petition, including Exhibit D to the petition, as well as the Petitioner's March 25, 2015 comments on the revised WMPs only specifically allege substantive inadequacies of three of the nine WMPs, namely the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP. The Petitioners do not allege any specific challenges to the substantive adequacy of the remaining six WMPs, but still request that the Regional Board invalidate the Executive Officer's approvals with conditions for those six WMPs. Without specific factual allegations concerning an inadequacy of a WMP, the Petitioners have not provided the Regional Board with specific allegations to review. Board staff are thus left to speculate as to Petitioners' concerns with the remaining six WMP and cannot adequately respond to unknown allegations. The Regional Board may determine that the sufficiency of these six WMPs is not properly before the Regional Board in its consideration of the petition.</p> <p>For the Regional Board's reference pertaining to the alleged substantive inadequacies of the Lower San Gabriel River WMP, the Lower Los Angeles River WMP, and the Los Angeles River Upper Reach 2 WMP, Board staff has prepared responses to Petitioners' detailed technical comments in its Memorandum of Points and Authorities and in Exhibit D to the petition. These responses are included in a separate matrix as Attachment 1 to this document.</p> <p>For the Board's further reference, Board staff has also prepared</p>

Contention No.	Summary of Contention	Staff Response
		<p>an assessment of the Petitioners' March 25, 2015 comments on the revised WMPs. This assessment is included as an additional matrix as Attachment 2 to this document.</p>
<p>4.2</p>	<p>Reasonable Assurance Analysis Perhaps the most glaring deficiency in the WMPs is the flawed Reasonable Assurance Analysis ("RAA") in each. The RAA is a detailed modeling exercise, intended to ensure that the WMPs implement stormwater pollution control measures of the correct type, location, and size to achieve compliance with WQSs in receiving water bodies. The RAA forms the bedrock for WMP development, and therefore for pollution control and compliance with the CWA for those Permittees that choose to develop WMPs.</p> <p>Moreover, Regional Board staff has also recognized the importance of the RAA in WMP development and implementation and thereby need for a robust analysis. As a result, Regional Board staff generated extensive comments on the RAAs that were described in the initial drafts of the WMPs.</p> <p>Despite the detailed comments from Regional Board staff, and the admonition that failure to conduct the required corrections to the RAA modeling would result in denials, the final draft WMPs for the Lower San Gabriel, Los Angeles River Upper Reach 2, and Lower Los Angeles River WMGs either failed to meaningfully address or completely ignored all of the Regional Board staff's identified comments.</p>	<p>Staff disagrees with the Petitioners' contentions that the conditionally approved WMPs "fail to address any of the RAA inadequacies identified by [staff]." As previously noted, the Permittees addressed staff's comments prior to the Executive Officer's action. For specific responses to alleged inadequacies, see Attachment 1, as well as staff's assessment of Petitioners' March 25, 2015 comments on the revised WMPs in Attachment 2.</p> <p>Staff further disagrees that the terms of the conditional approvals will not ensure that the RAA will provide any assurance that WMP implementation will achieve compliance with water quality standards and the Clean Water Act. Like many Permittees, Regional Board staff recognizes that the RAAs are not perfect. At this point, they cannot be. RAAs are modeling exercises that reflect current knowledge, best engineering judgment, and available data. The models used for the RAAs were calibrated using the best available monitoring data, and they will be further refined through the adaptive management process as more data become available from the expanded integrated monitoring programs and coordinated integrated monitoring programs. As previously noted, some of the conditions imposed by the Executive Officer were due to lack of data, which can only be remedied with data collection. As the Board is aware, the Permit required new and expanded monitoring, including new outfall monitoring. As outfall monitoring is conducted, new data will be collected. In adopting the Permit, it was not the Board's intent to create an impossible situation whereby, due to lack of data, a WMP could not be approvable within the specified timeframe. In addition, the</p>

Contention No.	Summary of Contention	Staff Response
	<p>Rather than denying the facially inadequate final WMPs as required by the Permit, the Executive Officer, on behalf of the Regional Board, approved the WMPs with conditions that <i>fail to address any of the RAA inadequacies identified by RWQCB staff</i>. Therefore, even if fully complied with, the terms of the conditional approvals will <i>not</i> ensure that the RAA – the basis for development, implementation, and evolution of the pollution control measures to be implemented via the WMPs – will provide <i>any</i> level of assurance that the WMP implementation will achieve compliance with water quality standards and the Clean Water Act, let alone the “reasonable” assurance that the Permit and the State Board require. For this reason alone, the WMPs must be denied.</p>	<p>Permit specifies a focus on deadlines during the current term (through 2017) and next 5-year permit term, recognizing that project details would be fewer for later implementation phases. Through the adaptive management program and updates to the WMP, the Permittees are expected to add details to later implementation phases as those phases near, and update their RAA when directed by the Executive Officer, and at least by June 30, 2021.</p> <p>See Attachment 1 for staff’s responses to the detailed list of RAA contentions identified by Petitioners in their Memorandum of Points and Authorities and Exhibit D to the petition.</p>
4.3	<p>For the Los Angeles River Upper Reach 2 WMP, the revised plan confirms that the model had not been calibrated and is thus an almost entirely speculative exercise.</p>	<p>Because of its small area within the larger Los Angeles River watershed and the lack of monitoring data within the Group’s watershed management area, the Los Angeles River Upper Reach 2 WMP relied upon calibration that has been conducted for the Countywide Watershed Management Modeling System (WMMS). Specifically, the Group used the Countywide calibration to summarize and compare Loading Simulation Program in C++ (LSPC) predicted and observed flows for key locations within the Los Angeles River watershed upstream and downstream of the Los Angeles River Upper Reach 2 watershed management area. The hydrology calibration at both locations was considered “very good” according to the criteria in the Regional Board staff’s RAA guidelines.</p> <p>The Group also used the calibrated Countywide LSPC model to adjust the input parameters of the Structural BMP Prioritization</p>

Contention No.	Summary of Contention	Staff Response
		<p>and Analysis Tool (SBPAT), which the Group elected to use in its RAA, to improve comparability with the County-calibrated LSPC baseline condition outputs. Board staff found this to be a reasonable approach given the limited data currently available within the Los Angeles River Upper Reach 2 watershed management area, but directed the Group to use data collected through its CIMP to refine and recalibrate its RAA through the adaptive management process.</p>
4.4	<p>Substantive Program Requirements Similar to the RAA-related deficiencies, many of the other inadequacies that Regional Board staff originally identified in their October 2015 comments were not addressed by the conditional approvals. A comprehensive list of the substantive requirements of the Permit that the conditional approvals fail to address is provided in Exhibit D to the petition. The failure of the revised WMPs to address these deficiencies should have resulted in denial of the WMPs.</p>	<p>See Attachment 1 for staff's responses to Petitioners' detailed technical comments in its Exhibit D to the petition.</p>

ATTACHMENT 1

Staff Response to Petitioners' Detailed Technical Comments in its Memorandum of Points and Authorities and Exhibit D

Permit Citation	Regional Board Comment on Draft WMP	Environmental Groups' Analysis of Revised WMP Responsiveness to Regional Board Comment ¹	Regional Board Staff's Assessment of Revised WMP Responsiveness to Comments and/or Final WMP Responsiveness to Conditions of Approval
Lower Los Angeles River			
Part VI.C.5.b.iv.(4)(b)-(c)	"The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity....is needed....[T]here should at least be more specificity on actions within the current and next permit terms."	The response, and other statements throughout the document, demonstrate that no commitments to "specificity or actions" or associated timelines are made.	<p>The Revised WMP provided more specificity in Section 5 regarding structural and non-structural best management practices (BMPs). Regarding structural BMPs, the Revised WMP included a pollutant reduction plan in Section 5.4 (pg. 5-7) that indicates the BMP volume that each Permittee needs to install within its jurisdiction at 31%, 50%, and final milestone dates (these milestones occur in 2017, 2024, and 2028, respectively) and also identified regional projects that could support achieving the 31% and 50% milestones.</p> <p>Section 5.3 was revised to include a schedule of feasibility studies and site assessments for regional projects. Section 5.2 (pg. 5-4) listed structural low impact development (LID) BMPs that are to be constructed within this permit term.</p> <p>However, the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the projects. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which</p>

¹ For each comment, the Petitioners indicated that there was no requirement to address the comment on the draft WMP in the conditions set forth in the Executive Officer's approval letter. Where a condition was not included in the approval letter, it is because the Executive Officer determined that the comment had been adequately addressed, either in the revised WMP or through other means.

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			<p>provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p> <p>The compliance schedule for nonstructural BMPs contained in Table 5-1 (pg. 5-3) of the Revised WMP contained some indeterminate milestone dates and in the case of TCM-RET-1 "Encourage Downspout Disconnects," no interim milestones or milestone dates. The Executive Officer's approval letter included a condition that the Group modify the milestones for these BMPs. The Final WMP addresses this condition by including additional milestones and dates for their achievement.</p> <p>These details on structural and non-structural BMPs adequately addressed the Board staff's comment.</p>
Part VI.C.5.b.iv.(4)(b)-(c)	"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."	No change was made in the document in response to the comment.	<p>As originally contained in the draft WMP, Section 5.4 (pg. 5-7) lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2024, and 2028. These BMP capacities are taken directly from the WMP's reasonable assurance analysis (RAA) analysis.</p> <p>If a Permittee does not achieve these BMP volume capacities by a milestone date, they are not in compliance with their WMP.</p> <p>Further, as stated above, Section 5.2 (pg. 5-4) lists structural LID BMPs that are to be constructed within this permit term. Section 5.3 (pg. 5-4) was revised to</p>

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			<p>include a schedule of feasibility studies and site assessments for regional projects. However, the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the LID BMPs. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p> <p>The Group has conveyed to Board staff that the information contained in Section 5 is the maximum practicable given uncertainties and that greater certainty will be provided through the adaptive management process.</p> <p>This adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(5)	"The RAA should clarify that sufficient sites were identified so that the remaining necessary BMP volume can be achieved by those sites that were not 'excluded for privacy.'"	No change was made in the document in response to the comment.	<p>The Group has indicated to Board staff that the complete list of potential sites — including the sites that were “excluded for privacy” — provide the necessary BMP volume, and that the “excluded for privacy” sites should be considered since they are still potential regional BMPs sites within the watershed.</p> <p>Section 5.4 (pgs. 5-7 through 5-15) lists potential regional BMPs that each Permittee may implement to achieve their 2017 and 2024 milestones. The regional BMPs listed in this section consist of public parks and do not include sites with addresses that were “excluded</p>

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			<p>for privacy.”</p> <p>Since the Group's Pollution Reduction Plan is an “initial scenario” that may adapt over time by substituting BMPs that produce an equivalent volume reduction, the above information given by the Group is sufficient. For example, through adaptive management, the RAA (Appendix A-4-1, pg. 64) notes that a jurisdiction may “increase implementation of green streets and reduce implementation of regional BMPs.”</p> <p>This adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(5)	<p>"The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants.</p> <p>If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant."</p>	No change was made in the document in response to the comment.	<p>The Group has added additional clarification on its limiting pollutant approach in Section 5 (pg. 5-1) of the WMP and in Section 5.3.1 of the RAA (Appendix A-4-1, pg. 38).</p> <p>The revised WMP does not state and justify this approach for each category 1, 2, and 3 pollutant; however, this is not necessary given the Group's limiting pollutant approach.</p> <p>This adequately addressed Board staff's comment.</p>

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Part VI.C.5.b.iv.(5)	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used....An explanation for the lack of modeling is needed."	No change was made in the document in response to the comment.	The Group has clarified that the Harbor Toxics TMDL did not directly model these pollutants, but instead used sediment as a surrogate. To establish baseline pollutant loading, the Group uses the 90 th percentile of observed concentrations for DDT, PCBs, and PAHs. This adequately addressed Board staff's comment.
Part VI.C.5.b.iv.(5)	"...the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL was [sic] appears to be completely omitted from the draft WMP."	No change was made in this section of the document and there is no inclusion of analysis of pollutant controls, as requested.	<p>On pgs. 38-39 of Appendix 4, A-4-1, Reasonable Assurance Analysis, the Group demonstrates that their limiting pollutant approach takes into account the Harbor Toxics TMDL by evaluating DDT, PCB, and PAHs in its RAA. The Group states that implementing control measures that control zinc will achieve the load reductions required to achieve the water quality based effluent limitations (WQBELs) of the Harbor Toxics TMDL. This is a reasonable assumption and consistent with the Harbors Toxics TMDL, in which the Board acknowledges that implementation of other TMDLs in the watershed may contribute to the implementation of the Harbors Toxics TMDL.</p> <p>For this reason, no condition was included in the Executive Officer's approval letter to address this comment.</p>

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Part VI.C.5.b.iv.(5)	<p>"Pursuant to Section VI.C.5.a., the WMP should be revised to include an evaluation of existing water quality conditions, classify them into categories, identify potential sources, and identify strategies, control measures, and BMPs as required in the permit for San Pedro Bay <i>unless MS4 discharges from the LLAR WMA directly to San Pedro Bay are being addressed in a separate WMP.</i>"</p>	<p>There is only one reference in the document to San Pedro Bay, and it remains unchanged from the 2014 version of the WMP.</p>	<p>The Group explained to Board staff that discharges to San Pedro Bay will be addressed by the City of Long Beach's WMP, which is currently under review by Board staff. As a note, the City of Long Beach is the only Group member adjacent to San Pedro Bay; however, the portion of Long Beach included in the Lower LA WMP Group is primarily adjacent to the LA River Estuary, not San Pedro Bay.</p> <p>As the original comment notes, this approach is appropriate. Therefore, no condition was included in the Executive Officer's approval letter to address this comment.</p>
Part VI.C.5.b.iv.(4)(c)	<p>"The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs."</p>	<p>No change was made in the document in response to the comment.</p>	<p>The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment</p> <p>The WMP Group has explained its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on the draft WMP.</p> <p>This adequately addressed Board staff's comment.</p>

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Part VI.C.5.b.iv.(5)(c)	"For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible....[The RAA] does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame."	No response identified.	<p>The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy:</p> <p style="padding-left: 40px;">Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures.</p> <p>The revised WMP provides an estimate of the cost of structural BMPs and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP.</p> <p>This additional clarification is a sufficient response to the comment. The Group's existing strategy to control pollutants "as soon as possible" is sound.</p>

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Part VI.C.5.b.iv.(5)	"The WMP assumes a 10% pollutant reduction from new non-structural controls....additional support for this assumption should be provided, or as part of the adaptive management process, the Permittees should commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."	No change was made in the document in response to the comment.	<p>The revised WMP now includes Section 4.3 (pg. 4-4), which discusses non-modeled controls, including the 10% pollutant reduction from new non-structural controls.</p> <p>Section 4.3 also clarifies the support for the 10% pollutant reduction and commits to a reevaluation of the assumption: "Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p> <p>This adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(5)	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	No change was made in the document in response to the comment.	<p>Table 5-6 of the RAA (Appendix A-4-1, pg. 40) reflects baseline loads for organics, metals, and bacteria.</p> <p>Although TSS is not included, the sediment associated pollutants are included (DDT, PCB, and PAH).</p> <p>This adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(5)	"The report presents the existing runoff volumes, required volume reductions and proposed	No change was made in the document in response to the comment.	Attachment B to the revised WMP includes detailed jurisdictional compliance tables that include runoff volumes, required volume reductions, and proposed volume reductions for each subwatershed.

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	<p>volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area....The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-4 through 9-7 and how these values were derived from previous tables.</p> <p>"The report needs to present the same information, if available, for nonstormwater runoff."</p>		<p>Language was added in section 9.2.1 of the RAA (Appendix, pg. 55) that clarifies the incremental and cumulative columns in Tables 9-4 through 9-7.</p> <p>Section 4.2 of the revised WMP commits to re-calibrate the RAA based on data collected through the monitoring program (which includes the non-stormwater outfall screening and monitoring program).</p> <p>This adequately addressed Board staff's comment.</p>

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Lower San Gabriel River			
Part VI.C.5.b.iv.(4)(b)-(d)	"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."	The response implies no commitment beyond good intentions and a willingness to track progress (or its lack thereof) through the permit cycle.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>As originally contained in the draft WMP, Section 5.4 (pgs. 5-7 through 5-20) lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2020, and 2026. These BMP capacities are taken directly from the WMP's RAA analysis.</p> <p>If a Permittee does not achieve these BMP volume capacities by a milestone date, they are not in compliance with their WMP.</p> <p>Section 5.2 (pg. 5-4) lists structural LID BMPs that are to be constructed within this permit term. Section 5.3 (pg. 5-4) was revised to include a schedule of feasibility studies and site assessments for regional projects. However, the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the LID BMPs. The Executive Officer's approval letter included a condition that the Group add definitive dates for these structural BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p> <p>The Group has conveyed to Board staff that the information contained in Section 5 is the maximum practicable given uncertainties and that greater</p>

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			<p>certainty will be provided through the adaptive management process.</p> <p>This adequately addressed Board staff's comment.</p>
<p>Part VI.C.5.b.iv.(4)(d)</p>	<p>"The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity....is needed....there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met..."</p>	<p>The response, and other statements throughout the document, make it clear that no commitments to "specificity or actions" or associated timelines are made. There is also no cross-walk between scheduled completion dates and interim compliance deadlines. Given the vague nature of nearly all of the "milestones," it's not surprising that there is no direct linkage between actions, meeting interim requirements, and the schedule.</p>	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>The Revised WMP provided more specificity in Section 5 regarding structural and non-structural BMPs. Regarding structural BMPs, the Revised WMP includes a pollutant reduction plan in Section 5.4 (pg. 5-7) that indicates the BMP volume that each Permittee needs to install within its jurisdiction at 10%, 35%, and Final milestone dates (these milestones occur in 2017, 2020, and 2026, respectively) and also identifies regional projects that could support achieving the 10% and 35% milestones.</p> <p>As stated above, Section 5.2 (pg. 5-4) lists structural LID BMPs that are to be constructed within this permit term. Section 5.3 was revised to include a schedule of feasibility studies and site assessments for regional projects. However, the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the projects. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p>

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			<p>The compliance schedule for nonstructural BMPs contained in Table 5-1 (pg. 5-3) of the Revised WMP contained some indeterminate milestone dates and in the case of TCM-RET-1 "Encourage Downspout Disconnects," no interim milestones or milestone dates. The Executive Officer's approval letter included a condition that the Group modify the milestones for these BMPs. The Final WMP addressed this condition by including additional milestones and dates for their achievement.</p> <p>These details on structural and non-structural BMPs adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(5)	<p>"The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants.</p> <p>If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3</p>	The draft WMP does not appear to have been modified in response to this comment.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP. (Note: The RAA for LLAR, LSGR, and the Los Cerritos Channel WMP Groups were contained in a 347-page attachment that covered all three watersheds.)</p> <p>The Group has added additional clarification on its limiting pollutant approach in Section 5 (pg. 5-1) of the WMP and in Section 5.3.1 of the RAA (Appendix A-4-1, pg. 38).</p> <p>The revised WMP does not state and justify this approach for each category 1, 2, and 3 pollutant; however, this is not necessary given the Group's limiting pollutant approach.</p> <p>This adequately addressed Board staff's comment.</p>

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	pollutant."		
Part VI.C.5.b.iv.(5)	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used....An explanation for the lack of modeling is needed."	No change was made in the document in response to the comment.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>The Group has clarified that the Harbor Toxics TMDL did not directly model these pollutants, but instead used sediment as a surrogate. To establish baseline pollutant loading, the Group uses the 90th percentile of observed concentrations for DDT, PCBs, and PAHs. This adequately addressed Board staff's comment.</p>
Part VI.C.5.b.iv.(4)(c)	"The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs."	No change was made in the document in response to the comment.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment.</p> <p>The WMP Group has clarified its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on draft WMP.</p> <p>This adequately addressed Board staff's comment.</p>

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Part VI.C.5.b.iv.(5)(c)	"For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible....[The RAA] does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame."	There is no response to this comment.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy: Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures.</p> <p>The revised WMP provides an estimate of the cost of structural BMPs and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP.</p> <p>This additional clarification is a sufficient response to the comment. The Group's existing strategy to control pollutants "as soon as possible" is sound.</p>
Part VI.C.5.b.iv.(5)	"The draft assumes a 10% pollutant reduction from new non- structural controls....additional support for this	There was no substantial advance over what was previously included, though the issue is acknowledged explicitly.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>The revised WMP now includes Section 4.3 (pg. 4-4), which discusses non-modeled controls, including the</p>

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	<p>assumption should be provided, particularly since the group appears to be relying almost entirely on these controls for near-term pollutant reductions to achieve early interim milestones/deadlines."</p>		<p>10% pollutant reduction from new non-structural controls.</p> <p>Section 4.3 also clarifies the support for the 10% pollutant reduction and commits to a reevaluation of the assumption: "Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p> <p>This adequately addressed Board staff's comment.</p>
<p>Part VI.C.5.b.iv.(5)</p>	<p>"Based on the results of the hydrology calibration shown in Table 4-3, the error difference between modeled flow volumes and observed data is 19%....The higher error percentage could be due to the exclusion of contributions of flow volume from upstream. For calibration purposes, upstream volume should be included....Once model calibration has been completed, the upstream flow volume can then be excluded...."</p>	<p>Between the 2014 and 2015 RAA's, the % error improves from -19.0% to -3.31%. There is no text change to explain this difference, nor any difference in the graphed monthly hydrographs for observed and modeled flows.</p>	<p>The Group has clarified that upstream flows were taken into account in the RAA.</p> <p>Additionally, the Group has also clarified that the tables in Sections 4.1.1 and 4.1.2 have been updated to show the modeled versus observed volume error for the daily calibration results as opposed to the monthly calibration results used in the draft WMP.</p> <p>This addressed Board staff's comment.</p>

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Part VI.C.5.b.iv.(5)	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	No change in the RAA to address this comment.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>Table 5-6 of the RAA (Appendix A-4-1, pg. 40) reflects baseline loads for organics, metals, and bacteria.</p> <p>Although TSS is not included, the sediment associated pollutants are included (DDT, PCB, and PAH).</p>
Part VI.C.5.b.iv.(5)	"The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area....The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-6 and 9-7 and how these values were derived from	The request for a series of tables by subbasin has not been met; an added sentence defines the terms used but not how the values were derived from previous tables. No new information addressing comment about non-stormwater runoff.	<p>The Petitioners' comment and Board staff's assessment is similar to that made on the LLAR WMP.</p> <p>Attachment B to the revised WMP includes detailed jurisdictional compliance tables that include runoff volumes, required volume reductions, and proposed volume reductions for each subwatershed.</p> <p>Language was added in section 9.2.1 of the RAA (Appendix A-4-1, pg. 55) that clarifies the incremental and cumulative columns in Tables 9-4 through 9-7. Explanation for how the values were derived from previous tables is unnecessary since Section 7.11 of the RAA (Appendix A-4-1, pg. 46) describes how incremental volume reductions for milestones were calculated.</p> <p>Regarding non-stormwater runoff, the revised WMP does not include the same information for non-stormwater runoff, however it includes additional information to support the assumptions used in its dry weather analysis:</p> <ul style="list-style-type: none"> - 10% nonstructural BMP assumption in Section

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	<p>previous tables.</p> <p>"The report needs to present the same information, if available, for non-stormwater runoff."</p>		<p>4.3</p> <ul style="list-style-type: none"> - 25% irrigation reduction assumption in Section 4.2.1 <p>Section 4 of the WMP, the Group commits to re-calibrate its modeling as data is collected through its monitoring program (which includes the non-stormwater outfall screening and monitoring program).</p> <p>As explained in Section 7.1.2. of the RAA (Appendix A-4-1, pg. 51), for non-stormwater flows, the Group assumes a 10% load reduction from nonstructural BMPs and a 25% reduction in irrigation, which leads to another modeled load reduction. The remaining load reduction required for dry weather is assumed to be addressed by structural BMPs.</p> <p>Since the Group is committed to recalibrate modeling with new monitoring data and evaluate the above assumptions, the revised WMP adequately addressed Board staff's comment.</p>
Los Angeles River Upper Reach 2			
Part VI.C.5.b.iv.(5)	<p>"The WMP did not model any pollutants in Categories 2 and 3. These pollutants or surrogates need to be included in the RAA, or supported justification for the use of the proposed limiting pollutants as</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>Section 2.4 of the Revised WMP was revised to clarify that Category 2 and Category 3 pollutants were well represented by Category 1 pollutants (see Table 2-7). For example, "coliform bacteria," a Category 2 pollutant, is represented by E. coli, a Category 1 pollutant, while various metals identified as Category 3 pollutants are represented by other metals that are Category 1 pollutants. This adequately addressed Board staff's comment.</p>

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	surrogates for each Category 2 and Category 3 waterbody-pollutant combination."		
Part VI.C.5.a.iii	"...the WMP should utilize General Industrial Storm Water Permittee monitoring results...to assess and potentially refine estimates of pollutant loading from the identified "non-MS4" areas.	The recommended action was not done.	<p>Section 2 of the revised and final WMP was amended to include details on the Group's analysis of non-MS4 industrial stormwater data. The following discussion was included on page 30 both the revised WMP and final WMP:</p> <p>Monitoring data, from non-MS4 Permittees in the LAR UR2 WMA [watershed management area], were also reviewed, however of 161 General Industrial Permittees within the WMA, only 35 were found to have submitted data to the State Storm Water Multiple Application and Report Tracking System (SMARTS) website. Initially, this data was briefly reviewed and appeared to have little diagnostic value in predicting pollutant sources or loads. Following receipt of the Board WMP comment letter, the analysis was repeated and again the data was found to be of limited value in guiding either current pollutant sources assessments or developing credible industrial land use pollutant EMCs. In the majority of cases, the monitoring data appeared variable and inconsistent, reported with mistaken concentration units, and the analytical parameters tracked were unrelated to likely facility pollutants or observed watershed</p>

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			<p>impairments. A determination was made that this data did not meet the RAA Guideline criteria for being sustentative and defensible. In addition, the current versions of Permit approved RAA models are limited to less than 20 land use categories, preventing the application of SMARTS Monitoring Data to individual Industrial Permittees.</p> <p>The approach in the final WMP is reasonable in light of this analysis.</p>
Part VI.C.5.a.iii	"The draft WMP should consider existing TMDL modeling data, where available, when refining the source assessment.	There is no evidence that this comment was considered or addressed.	The Group and Board staff discussed the existing TMDL modeling and found it too general to refine the Group's source assessment for its watershed area. The Group did, however, add detail to the discussion of TMDL source assessments in Section 2.3 of its Revised WMP, including consideration of recent TMDL monitoring data. This is appropriate as the comment was for the Group to consider existing TMDL modeling data.
Part VI.C.5.a.iii	"A process and schedule for developing the required spatial information on catchment areas to major outfalls should be proposed, if this information does not already exist."	There is no evidence that this comment was considered or addressed.	The Group clarified that some of the required spatial information was presented in the Coordinate Integrated Monitoring Program (CIMP). For the remainder, the Group committed to developing it as it implements its illicit connection/illicit discharge activities, non-stormwater screening and prioritization, and source identification.

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<p>Part VI.C.5.b Part VI.C.5.b.iv.(5)</p>	<p>"The draft WMP does not clearly specify a strategy to comply with the interim WQBELs for the LA River metals TMDL....Further discussion of current compliance with the LA River nitrogen compounds TMDL, for which there is a final compliance deadline of 2004, is also needed..."</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>Sections 4 and 5 of the Revised WMPs were revised to add clarity and specificity to the Group's phased implementation schedule relative to interim TMDL compliance deadlines.</p> <p>The Revised WMP also summarizes monitoring data from the LA River Metals TMDL coordinated monitoring program, which indicate that metals rarely exceed receiving water limitations during dry-weather at monitoring stations adjacent to the LAR UR2 watershed management area. (The interim compliance deadline of 2020 for metals in dry weather is one of the nearer term deadlines for the Group.) Regarding compliance with the LA River nitrogen compounds TMDL, the Group included an expand discussion in the RAA explaining that no nitrogen pollutant reduction was required.</p> <p>The Group will further evaluate whether past interim and final deadlines have been met as data are collected through the Group's CIMP.</p>
<p>Part VI.C.5.b</p>	<p>"...the specific LID street projects and their locations are not identified. The draft WMP should provide as much specificity as feasible in describing the potential locations for LID streets. Additionally, the permittees that would be responsible for</p>	<p>Section 4.3.3.2 identifies on proposed LID street BMP in Vernon and one completed and one potential LID street BMP in Commerce. It went on to give some budgetary rationalizations. Mere mention of three LID street BMPs, only one finished or with a solid commitment, is unresponsive.</p>	<p>Table 4-10 of the revised and final WMP lists the extent of LID streets that will be required within the jurisdiction of each LAR UR2 Permittee. Additionally, Section 4.3.3.2 (Revised WMP) and Section 4.5.2 (Final WMP) state:</p> <p>...they [LID streets] will be located near runoff collection or discharge points where their benefit is most easily accessed and quantifiable. LID Streets were applied to treat 25 percent of commercial and residential land uses in areas that were not tributary to</p>

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	implementing LID street projects should be specified."		<p>proposed regional BMPs on the Los Angeles River side of LAR UR2 WMA.</p> <p>The revised WMP identifies three near-term LID street BMPs in Section 4.3.3.2. The approval letter included a condition, directing the Group to provide interim milestones for LID Street implementation associated with the areas identified in Table 4-10. The Final WMP provides additional interim milestones for both specific projects and overall green street implementation in Table 5-1. The Final WMP also includes additional detail in Section 3.3.3 on green street projects in progress or recently completed with the LAR UR2 WMA, and greater detail in Section 4.5.2 on the type, location and treatment scale of planned green street projects. The additional detail and commitments adequately addressed Board staff's comment.</p>
Part VI.C.5.b	"The WMP assumes a significant reduction in copper based on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions....[A]dditional structural BMPs may still be needed to reduce copper loads prior to entering receiving waters and eliminate copper exceedances of RWLs."	Section 3.3.2 reasons that the phase-out is ahead of schedule and that other copper reductions will be afforded by source controls for zinc. Section 4.3.2.2 also discusses the issue but with nothing beyond the content of the draft WMP. The WMP shows no analysis of other sources and their magnitudes, how the accelerated phase-out might affect copper concentrations	<p>The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment.</p> <p>The WMP Group has clarified its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on the draft WMP. Specifically, the Revised WMP provided detail on expected reductions in copper runoff under various implementation scenarios at TMDL compliance milestones (Section 4.3.2.2, Table 4-8, pg. 87).</p>

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		and loadings, or how source controls for zinc will affect copper. Sources of zinc and copper are not necessarily coincident, and frequently are not.	This adequately addressed Board staff's comment.
Part VI.C.5.b.iv.(5)	"Table 1-5 should be updated....The concentration-based WQBELs for metals on page 78 are incorrect...."	There is no evidence that this comment was considered or addressed.	The revised WMP did not correct the error. However, during a subsequent meeting, Board staff directed the Group to correct Table 1-5 to reflect the correct effective date for the Los Angeles River Nitrogen Compounds and Related Effects TMDL. The final WMP has the correct date in Table 1-5. During the same meeting, Board staff directed the Group to revise the concentration-based WQBELs for metals, which were presented as water effects ratio (WER)-adjusted WQBELs, as the recently adopted WERs are not yet in effect. The final WMP was revised to present the currently applicable WQBELs.
Part VI.C.5.b.iv.(5)	"The differences between baseline concentrations/loads and allowable concentrations/loads should be presented in a time series...and then as a summary of 90th percentile of the differences between pollutant concentrations/loads and allowable	There is no evidence that this comment was considered or addressed.	Section 4.4 (Modeling Output) of the Revised WMP and Section 4.5 (Modeling Output) of the Final WMP states: [t]he following tables present individual and summed BMP load reductions for fecal coliform, copper, and zinc for the Los Angeles River and Rio Hondo drainage areas. The following tables will follow the units presented in Attachment O of the MS4 Permit. Bacteria loads will be presented in MPN/day, and metal loads will be presented in kg/day. Bacteria load reduction results (Table 4-20 and Table 4-21) are shown for the final wet-weather bacteria TMDL compliance date of 2037, modeled

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	<p>concentrations/loads for wet weather periods, in units consistent with the applicable WQBELs and Receiving Water Limitations..."</p>		<p>using rainfall data from the 90th percentile year based on wet days (2011). Metals load reduction results (Table 4-22 and Table 4-23) are shown for the final wet-weather metals TMDL compliance date of 2028, modeled using rainfall data from the 90th percentile year based on rainfall (1995). Average (mean) load reduction results are shown, as well as the interquartile ranges (25th to 75th percentiles), to reflect model output variability, which is primarily driven by land use EMC variability.</p> <p>Time series data were provided in model output files. Total BMP load reductions that exceed the target load reductions indicate that reasonable assurance (of meeting the permit limits) has been demonstrated for that pollutant for that drainage area. The tables in combination with the model output files adequately addressed Board staff's comment.</p>
<p>Part VI.C.5.b.iv.(5)</p>	<p>"...a detailed explanation should be provided of the calculations used to derive the target load reductions."</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>Section 4.3.1, Target Load Reductions, details how the Target Load Reductions were calculated. The Group provided model input and output files that allowed Board staff to verify the calculated Target Load Reductions. The Groups' explanation adequately addressed Board staff's comment.</p>
<p>Part VI.C.5.b.iv.(5)</p>	<p>"Model output should also be provided for phased BMP implementation to demonstrate that interim</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>The Group submitted the model input and output file in response to Board staff's request. The revised WMP relies on a storm water volume capture approach to demonstrate compliance with WQBELs and receiving water limitations. The modeling calculated the</p>

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	<p>WQBELs for metals and bacteria will be met."</p>		<p>necessary volume capture to achieve compliance with WQBELs and receiving water limitations. Section 4.3.1, Target Load Reductions, includes the calculated volume capture of the BMPs that need to be implemented to achieve compliance. Table 5-1 of the revised WMP identifies the proposed control measure implementation schedule based on the phasing needed to achieve compliance with interim and final compliance targets for both bacteria and metals. The final WMP was revised in response to a condition in the Executive Officer's approval letter to modify the title of Table 5-1 to Control Measure Implementation Schedule, removing the word "tentative" from the title.</p>
<p>Part VI.C.5.b.iv.(5)</p>	<p>"The ID number for each of the 50 subwatersheds from the model input file should be provided and be shown in the simulation domain to present the geographic relationship of subwatersheds within the watershed area that are simulated in the LSPC model."</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>The Group provided the subwatershed ID numbers as well as submitted the model input and output files in response to Board staff's request.</p>

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Part VI.C.5.b.iv.(5)	"The flow, runoff volume and water quality....time series output at the watershed outlet as well as for each modeled subbasin should be provided using the 90th percentile critical conditions....to estimate the baseline condition. In addition, per RAA Guidelines, the model output should include stormwater runoff volume and pollutant concentration/load at the outlet and for each modeled subbasin for each BMP scenario as well..."	There is no evidence that this comment was considered or addressed.	The Group submitted the model input and output files in in response to Board staff's request. The time series output is contained within the submitted model files.
Part VI.C.5.b.iv.(5)	"The identification of the 90th percentile years in Table 4-2 needs to be supported by presenting historical hydrological data to demonstrate the selected critical period will capture the variability of rainfall and storm sizes/conditions."	The presentation does not demonstrate that the choice of critical years given in Table 4-2 is correct. The analysis and graphing are not for precipitation frequency, as requested by the comment, but flow rate frequency. The addition to the WMP is thus unresponsive.	Section 4.3.1, Target Load Reductions, of the revised WMP clearly states LACFCD's South Gate Transfer Station (D1256) rain gauge is associated with the largest unit area within the WMA, as demonstrated in Figure 4-4 and was therefore assumed to be representative of atmospheric conditions for the sub-region. The period of record for the gage is 1986-2011. The final WMP was revised to include Table 4-1, which lists the annual rainfall depth, for each year, for the period of 1989 to 2011. The comment was appropriately addressed.

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Part VI.C.5.b.iv.(5)	"Model simulation for copper, lead, zinc, nitrogen, and bacteria under the dry weather condition was not included in the Report and needs to be addressed."	Two paragraphs were added to the WMP in section 4.3 reasoning that the approved models are not applicable to dry weather. Yet the consultant who prepared the Lower San Gabriel River RAA developed methodology to simulate dry weather conditions and to develop dry-weather pollutant reduction targets.	<p>The models identified in the Los Angeles County MS4 Permit for use in conducting Reasonable Assurance Analysis were selected because they can represent rainfall and runoff processes of urban and natural watershed systems. The models were designed to model rain events and the resulting pollutant loads based on predictable rainfall-runoff relationships.</p> <p>While several Groups used the models to strategically plan dry weather compliance, they did so in a novel manner by modeling irrigation flow as a simulated rain event. This approach was taken by watershed groups where the Permittees determined that irrigation flow may be a significant source of dry weather pollutant loading in their watershed.</p> <p>Generally, modeling of non-stormwater discharges is not conducted due to uncertainties in predicting dry-weather runoff volume, which is driven by variable and unpredictable human activities rather than climatic factors. As such, dry weather compliance strategies are generally more conceptual, targeting reduction in non-stormwater discharges through implementation of illicit discharge elimination programs and BMPs for stormwater runoff that can have the added benefit of addressing dry-weather runoff as well. Section 4.3, Modeling Process, of the revised WMP states in part, "[a]lthough model simulations for dry weather are not included, dry weather compliance is demonstrated by the Los Angeles River Bacteria TMDL Load Reduction study, Los Angeles River Metals TMDL CMP Annual Reports, and will continue to be assessed through</p>

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			<p>CIMP implementation, particularly dry-weather receiving water monitoring and non-stormwater outfall screening, source assessments, and monitoring” (pg. 75).</p> <p>The approval letter also included a condition, requiring the Group to include reference to the LA River Bacteria TMDL dry-weather load reduction strategy (LRS), submitted by the Group in December 2014, and the specific steps and dates for investigating outlier outfalls as set forth in the LRS. The Final WMP includes a new section 3.1.5.3 and revisions to Table 1-6, which identify steps and dates for investigating outlier outfalls as required by the condition in the approval letter (pg. 41). The dry weather RAA approach is appropriate.</p>

ATTACHMENT 2

Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP)

Watershed Management Group	Environmental Groups' Summary of Regional Board Comment on Draft WMP	Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)	Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)
<p>(1) Los Angeles River Upper Reach 2</p>	<p>Identify and address Category 3 Water Body-Pollutant Combinations (WBPCs) in RAA and WMP similar to Category 1 WBPCs; analyze load reductions from proposed watershed control measures.</p> <p>The WMP needs to provide support for the assumption that Category 2 and 3 pollutants will be addressed by focusing on the limiting bacteria and metals pollutants.</p>	<p>The Category 3 pollutants [total phosphorus, pH, total suspended solids, chromium, and nickel] are not represented on the Category 1 or 2 lists. (Page 3)</p> <p>It is false that total nitrogen (TN) and Category 1 inorganic nitrogen compounds are "the same pollutant" because TN consists of, in addition to inorganic compounds, various organic nitrogen compounds. The Environmental Groups further state, "[t]here is no evidence that this comment</p>	<p>Tables 2-6 and 2-7 in the revised WMP (pp. 29, 34) and final WMP (pp. 29, 34) list potential Category 3 pollutants. Both note that the data used to identify these Category 3 pollutants are from outside of the Group's boundaries. Therefore, the WMP commits to obtaining data applicable to the LAR UR2 subwatershed area to update the Category 3 pollutants through the Group's Coordinated Integrated Monitoring Program (CIMP) and the adaptive management process. This is a reasonable approach as receiving water monitoring under the previous LA County MS4 Permit was limited to several mass emissions stations (typically one per watershed), which limits the ability of some groups to identify Category 3 pollutants.</p> <p>While it is true that TN and inorganic nitrogen compounds are not the same pollutant, in the RAA, the use of subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants. (For example, the Countywide Watershed Management Modeling System (WMMS) models TN,</p>

<p>Watershed Management Group</p>	<p>Environmental Groups' Summary of Regional Board Comment on Draft WMP</p>	<p>Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)</p>	<p>Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)</p>
		<p>[by Board staff] was considered." (Pages 3-4)</p>	<p>which includes both inorganic and organic nitrogen compounds.) This is based on the knowledge that the baseline loading, target reductions and anticipated reductions with best management practices (BMP) implementation of other pollutants with similar sources and fate and transport mechanisms will be represented by the subset of modeled pollutants. It is also based on the fact that some pollutants will drive BMP implementation (i.e., these "limiting" pollutants will require the most aggressive suite of BMPs to meet water quality requirements). The revised and final WMP adequately describe this approach and the rationale in Section 4.0 on page 70 and 73, respectively.</p>
<p>(2) Los Angeles River Upper Reach 2</p>	<p>Use General Industrial Stormwater Permit monitoring results and other data to refine estimates of pollutant loading from non-MS4 areas in the RAA and WMP.</p>	<p>Although some of the data may be inadequate, additional data should be used wherever possible, including regional data, data from the literature of the field, and data from permitted industries elsewhere. Using the best available data for this purpose would not be inconsistent with other modeling and analysis strategies pursued in the WMP; e.g., almost all receiving water data relied upon are from outside the reach in</p>	<p>Section 2 of the revised and final WMP was amended to include details on the Group's analysis of industrial stormwater data. The following discussion was included on page 30 of both the revised WMP and final WMP:</p> <p>Monitoring data, from non-MS4 Permittees in the LAR UR2 WMA [watershed management area], were also reviewed, however of 161 General Industrial Permittees within the WMA, only 35 were found to have submitted data to the State Storm Water Multiple Application and Report Tracking System</p>

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		<p>question. (Page 4)</p>	<p>(SMARTS) website. Initially, this data was briefly reviewed and appeared to have little diagnostic value in predicting pollutant sources or loads. Following receipt of the Board WMP comment letter, the analysis was repeated and again the data was found to be of limited value in guiding either current pollutant sources assessments or developing credible industrial land use pollutant EMCs. In the majority of cases, the monitoring data appeared variable and inconsistent, reported with mistaken concentration units, and the analytical parameters tracked were unrelated to likely facility pollutants or observed watershed impairments. A determination was made that this data did not meet the RAA Guideline criteria for being sustentative and defensible.</p> <p>When presented with this analysis, Board staff agreed that the data were not appropriate to use to refine estimates of pollutant loading from industrial facilities within the LAR UR2 WMA. Consequently, the LAR UR2 Watershed Management Group relied upon the regional event mean concentrations (EMCs) to determine</p>

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			<p>baseline loading from industrial areas within its subwatershed area. The analysis of monitoring data submitted by general industrial stormwater permittees within the subwatershed and discussion of TMDL source assessments in Section 2.3, and the use of regional land use specific EMCs in the RAA, adequately addressed Board staff's comment.</p>
<p>(3) Los Angeles River Upper Reach 2</p>	<p>Specify why the LA River metals TMDL is not included as Category 1a since some compliance deadlines have passed.</p> <p>The WMP does not specify a strategy to comply with interim LA River metals TMDL WQBELs and specifically needs to be revised to document either that past deadlines have been achieved or provide a strategy to do so.</p>	<p>No assessment was provided by the Environmental Groups, but the following statement was in the letter, "[t]here is no evidence that this comment was considered." (Page 4)</p>	<p>A number of Permittees opted to further subcategorize pollutants within Categories 1, 2 and 3, though such subcategorization is not required by the permit. In this case, the revised WMP does not specify why metals are not included in Category '1a,' but the revised and final WMP does accurately identify the past interim compliance milestones for metals in Table 1-6 (p. 18) and appropriately identifies metals as Category 1 pollutants in Tables 2-6 and 2-7 (pp. 29, 34).</p> <p>Both also note the following in Section 2.3 Source Assessment, which informs the Group's prioritization of pollutants, "[a]s summarized in the Los Angeles River Metals TMDL CMP Annual Reports, dry-weather monitoring data from stations adjacent to the LAR UR2 WMA were rarely in exceedance for metals." The revised and final WMP clearly state that the Group will continue to</p>

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			<p>monitor for dry weather metal concentrations, as proposed in the CIMP, and implement the structural and non-structural watershed control measures identified in Section 5 to further identify and control the sources of metals in runoff and LAR UR2 WMA receiving waters. Through the CIMP, data will be obtained to evaluate whether past deadlines have been achieved. This adequately addressed Board staff's comment.</p>
<p>(4) Los Angeles River Upper Reach 2</p>	<p>The WMP needs to include a firm schedule for implementation of trash TMDL BMPs.</p>	<p>The Environmental Groups' state that there is no evidence that this comment was considered. (Page 4)</p>	<p>Both the revised and final WMP include the final implementation date of October 1, 2015 in Table 5-1 on pages 104 and 117, respectively, which is consistent with the trash TMDL schedule. The revised WMP identified challenges with retrofitting remaining catchbasins with full capture devices (p. 40). However, the approval letter included a condition, directing the Group to include a strategy to address the remaining catchbasins as necessary to comply with the trash TMDL. The final WMP includes discussion of the Group's final trash TMDL implementation steps to overcome these retrofitting challenges in Section 3.1.5.3 on page 41.</p>

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<p>(5) Los Angeles River Upper Reach 2</p>	<p>The WMP should provide as much specificity as feasible in describing the locations of LID streets and permittees responsible for them.</p>	<p>The Environmental Groups state that the information in the draft and revised WMP is insufficient. (Page 5)</p>	<p>Table 4-10 of the revised and final WMP lists the extent of LID streets that will be required within the jurisdiction of each LAR UR2 Permittee. Additionally, Section 4.3.3.2 (Revised WMP) and Section 4.5.2 (Final WMP) state, "...they [LID streets] will be located near runoff collection or discharge points where their benefit is most easily accessed and quantifiable. LID Streets were applied to treat 25 percent of commercial and residential land uses in areas that were not tributary to proposed regional BMPs on the Los Angeles River side of LAR UR2 WMA." The revised WMP identifies three near-term LID street BMPs in Section 4.3.3.2. The approval letter included a condition, directing the Group to provide interim milestones for LID Street implementation associated with the areas identified in Table 4-10. The Final WMP provides additional interim milestones for both specific projects and overall green street implementation in Table 5-1. The Final WMP also includes additional detail in Section 3.3.3 on green street projects in progress or recently completed with the LAR UR2 WMA, and greater detail in Section 4.5.2 on the type, location and treatment scale of planned green street projects. The additional detail and commitments adequately addressed Board staff's comment.</p>

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<p>(6) Los Angeles River Upper Reach 2</p>	<p>The WMP should provide more detail on how the adaptive management process will be implemented.</p>	<p>There is no evidence that this comment was considered, and the subject is crucial to success in reaching compliance. (Page 5)</p>	<p>Section 1 of the revised and final WMP state, "[t]his WMP plan is a critical component of the iterative Adaptive Management Process (AMP) strategy and will be updated every two years as described in the MS4 Permit, or amended with minor corrections as warranted by changing regional precedents and the development of new scientific and technical data." The final WMP also states in Section 4.0, "...CIMP implementation, outfall monitoring, and the adaptive management process, should allow directly applicable local LAR UR2 WMA models to be developed, tested, and calibrated based on observed data, allowing revision of this initial RAA and consideration of different pollutants, standards, and implemented watershed control measures" (p. 79). The Executive Officer also provided additional direction on the adaptive management process to all Permittees implementing a WMP in the letters approving the WMPs.</p>
<p>(7) Los Angeles River Upper Reach 2</p>	<p>The WMP needs to include specific commitments to implement the non-structural BMP enhancements, or not rely upon the 5% load</p>	<p>A comparison of page numbers is by no means documentation that load reduction will result. Non-</p>	<p>On the basis of discussions at technical advisory committee (TAC) meetings and, specifically, RAA subcommittee meetings, the RAA guidance document developed by</p>

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	<p>reduction anticipated from their use.</p>	<p>structural BMPs beyond street vacuuming are ignored. (Page 5)</p>	<p>Regional Board staff allows Permittees to assume a 5% reduction in pollutant load from the baseline load in light of the additional minimum control measures (MCMs) in the 2012 permit as compared to the 2001 permit.</p> <p>Section 3.1 of the Revised WMP discusses new minimum control measures (MCM) provisions of the 2012 permit that will support a reduction in pollutant loads, while Table 3-8 on page 68 identifies specific non-structural BMPs that will be implemented by the Permittees of the LAR UR2 WMA consistent with, or in addition to, the baseline provisions of the 2012 permit. Table 3-8 includes a suite of non-structural BMPs; street vacuuming is only one among this suite.</p> <p>The Executive Officer's approval letter included conditions, directing the Group to revise certain sections of the WMP to clarify the Permittees' commitments regarding non-structural BMP implementation. Sections 3.1 and 4.4.4 of the final WMP note some of the differences in MCM requirements from the 2001 permit and the 2012 permit, and Table 3-8 of the final WMP (pp. 69-70) provides greater specificity with regard to the non-structural BMPs that each Permittee within the LAR UR2 WMA will implement, including</p>

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			<p>the timing of implementation. This adequately addressed Board staff's comment.</p>
<p>(8) Los Angeles River Upper Reach 2</p>	<p>The WMP is predicated on the assumption that industries will eliminate their contributions to receiving water exceedances as required by their permits. However, it is important that the jurisdictions ensure that industries implement required BMPs through various actions, such as tracking critical sources, education, and inspection.</p>	<p>The draft WMP is vague and does not even name, let alone commit to, specific measures such as those mentioned in the Board's comment. (Page 6)</p>	<p>In the revised and final WMP, the LAR UR2 Watershed Management Group commits to complying with all Industrial/Commercial Facilities Pollutant Control Program provisions of the 2012 permit. In the Final WMP, Table 3-8 is revised to include specific commitments to non-structural BMPs in addition to implementation of the baseline provisions of the Industrial/Commercial Facilities Pollutant Control Program provisions and indicates each Permittee's specific commitments, including timing of implementation. Additionally, Section 3.1.1.2 of the Final WMP considers additional enhancements to the program in certain jurisdictions with more extensive industrial area (e.g., City of Commerce).</p>
<p>(9) Los Angeles River Upper Reach 2</p>	<p>The differences between baseline concentrations/loads and allowable concentrations/loads should be presented in a time series for each pollutant...</p> <p>In addition, a detailed explanation should be provided of the calculations used to derive the</p>	<p>There is no evidence that this comment was considered. (Page 6)</p>	<p>Section 4.4 (Modeling Output) of the Revised WMP and Section 4.5 (Modeling Output) of the Final WMP states:</p> <p>[t]he following tables present individual and summed BMP load reductions for fecal coliform, copper, and zinc for the Los Angeles River and Rio Hondo</p>

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	<p>target load reductions.</p> <p>Note: The March 25, 2015 Letter referenced RAA Comment B3, but misstated comment to read, "Give model output for interim WQBELs."</p>		<p>drainage areas. The following tables will follow the units presented in Attachment O of the MS4 Permit. Bacteria loads will be presented in MPN/day, and metal loads will be presented in kg/day. Bacteria load reduction results (Table 4-20 and Table 4-21) are shown for the final wet-weather bacteria TMDL compliance date of 2037, modeled using rainfall data from the 90th percentile year based on wet days (2011). Metals load reduction results (Table 4-22 and Table 4-23) are shown for the final wet-weather metals TMDL compliance date of 2028, modeled using rainfall data from the 90th percentile year based on rainfall (1995). Average (mean) load reduction results are shown, as well as the interquartile ranges (25th to 75th percentiles), to reflect model output variability, which is primarily driven by land use EMC variability.</p> <p>Time series data were provided to the Board in model output files. Total BMP load reductions that exceed the target load reductions (TLRs) indicate that reasonable assurance (of meeting the permit limits) has</p>

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			<p>been demonstrated for that pollutant for that drainage area. This explanation along with the model output files adequately addressed Board staff's comment.</p>
<p>(10) Los Angeles River Upper Reach 2</p>	<p>Describe how the model was calibrated.</p>	<p>This [description in section 4.5] does not demonstrate calibration. A calibration adjusts model parameters as needed to bring observed and simulated values into as much agreement as can be accomplished. What the final sentence of the response describes is not calibration but instead a verification step, which is a demonstration of the degree of difference that still exists between an independent observed data set and simulated values after calibration. There is no evidence presented that either operation has been completed. (Page 6)</p>	<p>Section 4.1.3.1 (Hydrology Calibration) of the Final WMP details the approach used for model calibration. It states, in part, "[a]s part of the Los Angeles County WMMS system, the LSPC module, including the Los Angeles River Watershed, was calibrated for hydrology and water quality performance. Input parameters and model settings were not modified during the LAR UR2 WMA RAA, so the original County calibration results should continue to apply; however they are partially repeated and summarized herein, with an emphasis on local or WMA applicability" (p. 75). Section 4.1.3.1 also clarifies the calibration process by stating, "[t]he County calibration documentation allows us to compare and summarize LSPC predicted and observed flows for key locations within watershed. As shown in Figure 4-1, for the Los Angeles River at Sepulveda Dam from October, 2002 to October, 2006, an average difference of 1.25% in annual stream volumes was observed placing these results within RAA Guidelines 'very good' range. For the period between October 1988 and October 1992 as shown in Figure 4-2, the watershed LSPC</p>

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			<p>model similarly compared favorably with downstream USGS gauge 11103000, with an average difference of only 4.37%, which is also within the 'very good' range." (p. 75) Additionally, in the Executive Officer's approval letter, a condition was included to provide the comparison of runoff volumes from Loading Simulation Program in C++ (LSPC) and Structural BMP Prioritization and Analysis Tool (SBPAT) as an appendix or subsection to the model calibration section. The Final WMP provided this comparison in Table 4-2 on page 89. This is a reasonable approach given available data for the LAR UR2 WMA. The approval letter also directed the LAR UR2 Watershed Management Group to refine and recalibrate its RAA based on data obtained through the Group's CIMP, which will be specific to the LAR UR2 WMA, as part of the adaptive management process.</p>
<p>(1) Lower Los Angeles River</p>	<p>Consider other TMDL source investigations (e.g., for metals).</p>	<p>No difference in draft and revised WMPs in how metals TMDL results were reported or used in section 2.2.4, in particular for source investigation. (Page 7)</p>	<p>Section 2.2.4 is part of the Water Quality Characterization section of the WMP rather than the Source Assessment section. Data collected since 2008 per the LA River Metals TMDL are presented in this section.</p> <p>The WMP's source assessment in Section 2.3 (starting on page 2-34) considers TMDL source investigations by citing TMDL findings that were not included in the draft</p>

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			<p>WMP. For example:</p> <ul style="list-style-type: none"> - Pg. 2-36: LA River Nitrogen Compounds and Related Effects TMDL – Wastewater reclamation plants are largest source of nutrient loadings; - Pg. 2-37: LA River Metals TMDL – Stormwater accounts for the majority of annual loading for various metals (40-95%); POTWs are primary source of metal loadings in dry weather; - Pg. 2-34: LA River Bacteria TMDL – Dry weather urban runoff and stormwater are the primary sources of bacterial loading in the watershed; and - Pg. 2-39: LA River Trash TMDL – Urban runoff is the dominant source of trash.
<p>(2) Lower Los Angeles River</p>	<p>Need: (1) map of major outfalls and structural controls, (2) outfall database, (3) maps of 53 subcatchments or process and schedule to develop.</p>	<p>Maps of major outfalls and structural controls is a permit requirement, which is not met here. (Page 7)</p>	<p>The LLAR Group has provided maps of major outfalls and structural controls (see Revised WMP, Section 3.4.3.3, Figure 3-16 and Chapter 4). Information pertaining to the outfall database was submitted with the CIMP. What the Group cannot provide readily are the drainage areas associated with each major outfall. However, Board staff's original comment states that if maps are not readily available, a process and timeline can be proposed.</p>

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			<p>The LLAR Group has indicated the difficulty of providing the requested catchment area information as part of its WMP submittal and has made a 1-year timeline to provide the catchments for major outfalls with significant discharges and outfalls where stormwater monitoring will occur. The CIMP also notes that refinement of catchment areas for major outfalls is ongoing. This adequately addressed Board staff's comment.</p>
<p>(3) Lower Los Angeles River</p>	<p>Demonstrate schedule ensures compliance as soon as possible.</p>	<p>The program needs to more clearly demonstrate that the compliance schedule (section 5) ensures that compliance can be achieved "as soon as possible." (Page 7)</p>	<p>The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures."</p> <p>The revised WMP provides an estimate of the cost of structural BMPs, and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP.</p>

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			<p>This additional clarification is a sufficient response to the comment. The Group's existing strategy to control pollutants "as soon as possible" is sound.</p>
<p>(4) Lower Los Angeles River</p>	<p>Address if limits for pollutants not addressed by TMDLs could be complied with in a shorter time.</p>	<p>There is no evidence that this comment was considered. (Pages 7-8)</p>	<p>This comment is similar to the above comment that compliance schedules for non-TMDL pollutants are "as soon as possible." The clarification provided by the Group in Section 5 (pg. 5-1) of the revised WMP on how the Group's strategy for meeting load reductions determined in the RAA is an aggressive compliance schedule is sufficient with respect to this comment.</p>
<p>(5) Lower Los Angeles River</p>	<p>More specificity on type, number, location, and timing of watershed controls. "The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance." Regional Water Board staff recognizes uncertainties may complicate establishment of specific implementation dates, however there should at least be more specificity on actions within the current and next permit terms.</p>	<p>As is the case with the Lower San Gabriel River ("LSGR") WMP, this passage has interpreted the Board's requirement for [as soon as possible] ASAP compliance in strictly financial terms, with additional indeterminate delays added for acquisition and "conversion." This response, and other statements throughout the document, make it clear that no commitments to "specificity or actions" or associated timelines have been provided.</p>	<p>The compliance schedule for nonstructural BMPs contained in Table 5-1 (pg. 5-3) of the Revised WMP contained some indeterminate milestone dates and in the case of TCM-RET-1 "Encourage Downspout Disconnects," no interim milestones or milestone dates. The Executive Officer's approval letter included a condition, directing the Group to modify the milestones for these BMPs. The Final WMP addressed this condition by including additional milestones and dates for their achievement. Section 5.2 (pg. 5-4) lists structural LID BMPs that are to be constructed within this permit term; however, the revised WMP did not contain definitive milestone dates nor did</p>

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		<p>For those actions with starting dates, both the draft WMP and revised WMP (with just 7 months between them) fail to demonstrate that actionable steps have been taken. For example, Table 5-1 in both documents lists the "Nonstructural TCM Compliance Schedule." However, of the items in the 2014 table with associated 2014 start dates, several are now listed in the 2015 table as having 2015 start dates (e.g., "Enhance tracking through use of online GIS MS4 Permit database" and "Exposed soil ordinance")—clearly, no assurances can be assumed from these documents. There is also no pathway between scheduled completion dates and interim compliance deadlines, as requested by the Board's comment and required by the 2012 Permit. (Pages 8-9)</p>	<p>it specify the Permittees responsible for the projects. The Executive Officer's approval letter included a condition, directing the Group to add definitive dates for these structural BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p> <p>Regarding other structural BMPs, the Revised WMP includes a pollutant reduction plan in Section 5.4 (pg. 5-7) that indicates the BMP volume that each Permittee needs to install within its jurisdiction at 31%, 50%, and Final milestone dates (these milestones occur in 2017, 2024, and 2028, respectively) and also identifies regional projects that could support achieving the 31% and 50% milestones.</p> <p>These details on structural and non-structural BMPs adequately address Board staff's comment.</p>

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<p>(6) Lower Los Angeles River</p>	<p>The draft WMP proposes a final compliance date of September 2030 for bacteria in the LA River Estuary. However, the Group does not provide sufficient justification for this date. ... Additional milestones and a schedule of dates for achieving milestones should be defined for addressing bacteria discharges to the LA River Estuary.</p>	<p>The response only addresses a schedule for submittals, not for achieving milestones. (Page 9)</p>	<p>The Group did not address this comment in the Revised WMP. The Load Reduction Strategy schedule for LAR Estuary was inadequate.</p> <p>The Executive Officer's approval letter included a condition, directing the Group to change the dates of submittals and implementation, as well as a date for when final water quality based effluent limitations (WQBELs) should be achieved. Section 5.4.10 of the Final WMP includes a revised Table 5-4, which provides milestones and a revised schedule of dates for achieving milestones sooner than initially proposed. The Executive Officer determined these revisions adequately addressed the condition in the approval letter.</p>
<p>(7) Lower Los Angeles River</p>	<p>The WQBELs that are established in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL shall be achieved through implementation of the watershed control measure proposed in the WMP. However, the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL appears to be completely omitted from the draft</p>	<p>There is a section in the 2014 WMP (3.4.1.6) on these TMDLs, but no change was made in this section of the document and there is no inclusion or analysis of pollutant controls, as requested.</p>	<p>On pgs. 38-39 of Appendix 4, A-4-1 Reasonable Assurance Analysis, the Group demonstrates that their limiting pollutant approach takes into account the Harbor Toxics TMDL by evaluating DDT, PCB, and PAHs in its RAA. The Group states that implementing control measures that control zinc will achieve the load reductions required to achieve the WQBELs of the Harbor Toxics TMDL. This is a reasonable assumption and consistent with the Harbors Toxics TMDL, in which the Board acknowledges that implementation of other TMDLs in the</p>

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	<p>WMP. The draft WMP did not include and analyze a strategy to implement pollutant controls necessary to achieve all applicable interim and final water quality-based effluent limitations...</p> <p>Pursuant to Section VI.C.5.a., the WMP should be revised to include an evaluation of existing water quality conditions, classify them into categories, identify potential sources, and identify strategies, control measures, and BMPs as required in the permit for San Pedro Bay unless MS4 discharges from the LLAR WMA directly to San Pedro Bay are being addressed in a separate WMP.</p> <p>--</p>	<p>There is only one reference in the document to San Pedro Bay, as follows and unchanged from the 2014 version: "In addition, the Cities of Signal Hill and Long Beach, and the LACSD developed a Contaminated Sediment Management Plan to support the long-term recovery of sediment and water quality in the Long Beach Harbor, Eastern San Pedro Bay, and the LAR Estuary." (p. 3-30). This is an insufficient response.</p>	<p>watershed may contribute to the implementation of the Harbors Toxics TMDL.</p> <p>For this reason, no condition was included in the approval letter to address this comment.</p> <p>The Group explained to Board staff that discharges to San Pedro Bay will be addressed by the City of Long Beach's WMP, which is currently under review by Board staff. As a note, the City of Long Beach is the only Group member adjacent to San Pedro Bay; however, the portion of Long Beach included in the Lower LA River WMP Group is primarily adjacent to the LA River Estuary, not San Pedro Bay.</p> <p>As the original comment notes, this approach is appropriate. Therefore, no condition was included in the Executive Officer's approval letter to address this comment</p>

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	<p>The draft WMP provided corresponding implementation schedules for nonstructural BMPs, which are assumed to result a 10% reduction in pollutant load. For structural BMPs, general implementation timeframes are given...to meet 31% and 50% of the compliance target by 2017 and 2024, respectively. However, greater specificity should be provided with regard to these dates, and additional milestones and dates for their achievement between 2017 and 2024 should be included.</p>	<p>--</p> <p>Identical wording as in the LSGR WMP was added here as well; it is no more responsive to the comment on this plan as it is for the LSGR WMP. (Pages 9-10)</p>	<p>--</p> <p>The Group discusses structural controls on pg. 5-4 noting that: "Uncertainties associated with the structural controls complicate establishment of specific implementation dates. Despite this uncertainty the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions."</p> <p>To substantiate this statement, the Group has provided additional detail in its Table 5-1 for nonstructural BMPs and has added information in Section 5.3.2 on its approach to implement structural controls:</p> <p>Right-of-Way (ROW) BMPs:</p> <ul style="list-style-type: none"> - Will be considered when new capital improvement projects are being constructed. - The Strategic Transportation Plan will redevelop major transportation corridors and will require that structural stormwater BMPs are incorporated into these projects where feasible. <p>Adaptive Management will provide an assessment of the effectiveness of these 2 pathways for ROW BMPs in contributing to metals reductions.</p>

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			<p>Regional BMPs:</p> <ul style="list-style-type: none"> - Preliminary site assessments and feasibility studies by March 2016 - Field analysis of selected sites by December 2016 <p>The Group included additional detail on its Prop 84 Grant projects in Section 5.2; however, this section still lacked specific milestone dates. The Executive Officer's approval letter included a condition, directing the Group to provide definitive dates with respect to these projects. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</p> <p>Regardless of the "uncertainty" that the Group cites in the WMP, the Board will treat the volume reduction milestones in 2017 and 2024 as compliance metrics for the Group.</p>
<p>(1) Lower San Gabriel River</p>	<p>Although section 3 includes a compliance strategy, the program needs to more clearly demonstrate that the compliance schedules (section 5) ensure compliance is "as soon as possible."</p>	<p>This passage [in Compliance Schedule, page 5-1] has interpreted the Board's requirement for [as soon as possible] ASAP compliance in strictly financial terms, with additional indeterminate</p>	<p>The Group reasonably justifies that their strategy will achieve compliance with receiving water limitations (RWLs) as soon as possible.</p> <p>The WMP conveys the uncertainty and financial hurdles faced by the Group as well</p>

<p>Watershed Management Group</p>	<p>Environmental Groups' Summary of Regional Board Comment on Draft WMP</p>	<p>Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment <i>(page number of March 2015 letter noted for reference)</i></p>	<p>Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment <i>(page number or section of revised/final WMP noted for reference)</i></p>
	<p>The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. The WMP schedule should at the least provide specificity on actions within the current and next permit terms.</p>	<p>delays added for acquisition and "conversion." It also expresses the judgment (drawn from section 5.3.1 of the RAA [Appendix 4-1]) that compliance schedules need only be evaluated for zinc, since other pollutants will be reduced at least as rapidly.</p>	<p>as the fact that the Group must control several different pollutants, including pollutants specified in TMDLs.</p> <p>The Group's strategy of controlling other pollutants as it implements its schedule to control the limiting pollutant zinc through nonstructural control measures and structural control measures is sound and consistent with the Board's integrated water resources approach to TMDL implementation, which is characterized by implementation measures that address multiple pollutants and achieve other benefits. The Group provides a pollutant reduction plan with interim milestones that specifies BMP volume capacity compliance targets that the Group must meet. These targets are specified at the jurisdictional and subwatershed levels (see Attachment B to the RAA – Detailed Jurisdictional Compliance Tables).</p> <p>The Group's comment about conversion of land and acquisition is with regards to regional BMPs. However, it should be noted that the potential initial scenario of control measures presented in the Group's pollutant reduction plan specifies BMP capacity to be installed through right-of-way BMPs and LID BMPs on public parcels, leaving a remaining BMP volume to be handled through</p>

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		<p>This response, and other statements throughout the document, make it clear that no commitments are made to "specificity or actions" or associated timelines. For those actions with starting dates, even the draft and revised WMPs with just 7 months between them, demonstrate a failure to perform. For example, Table 5-1 in both documents lists the "Nonstructural TCM Compliance Schedule." However, of the items in the 2014 table with associated 2014 start dates, several are now listed in the 2015 as having 2015 start dates (e.g., "Enhance tracking through use</p>	<p>"Potentially Regional BMPs," provided in the WMP's RAA (shown in Tables 9-6 and 9-7), constituting only ~2% of the BMP capacity to be installed.</p> <p>Right-of-Way BMP volume = 94.8 acre-feet (af) Estimated LID on Public Parcels = 21.8 af Remaining BMP Volume/Potentially Regional BMP = 2.2 af</p> <p>The Group provides specificity in its control measures by specifying the number of BMPs to be implemented in terms of BMP capacity volume. It then provides milestones for the installation of this BMP capacity volume.</p> <p>The Group commits to achieving milestones on page 5-5 stating: "...over time the Watershed Group will report and demonstrate that the summative effects of projects implemented add up to the required reductions for interim milestones and final targets."</p> <p>Taken altogether, the above information addressed Board staff's comment.</p> <p>Regarding the starting dates for nonstructural BMPs in Table 5-1, the cited start dates were specified as ranges in the draft WMP. For example the start date for</p>

<p>Watershed Management Group</p>	<p>Environmental Groups' Summary of Regional Board Comment on Draft WMP</p>	<p>Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)</p>	<p>Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)</p>
		<p>of online GIS MS4 Permit database"; "Exposed soil ordinance"—clearly, no assurances can be assumed from these documents. There is also no cross-walk between scheduled completion dates and interim compliance deadlines, as requested by the Board's comment and required by the 2012 Permit. (Pages 10-12)</p>	<p>"Enhanced tracking through use of online GIS MS4 Permit database" was 2014-2017. These dates were modified to be more specific in the revised WMP and to include associated milestones to track progress. To address instances where a milestone date was not specific, the Executive Officer's approval letter included a condition that the Group modify the milestone. The Executive Officer determined that the Final WMP addressed this condition.</p>
<p>(2) Lower San Gabriel River</p>	<p>For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate...that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible. The RAA ...does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.</p>	<p>There is no response to this comment; the RAA continues to not address whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame. (Page 12)</p>	<p>The Group responds to this comment in Section 5 of the WMP through its justification that their strategy is "as soon as possible." This comment is a corollary to the above comment and is sufficiently addressed.</p>
<p>(3) Lower San Gabriel River</p>	<p>"...the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."</p>	<p>This response clearly implies no commitment beyond good intentions and a (mandated) willingness to track progress (or its lack thereof) through the permit cycle.</p>	<p>The Group commits to the compliance milestones that are to be achieved through a mixture of structural BMPs, including green street conversion. Compliance with the 2017 first-term</p>

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		<p>(Pages 12-13)</p>	<p>milestone is planned to be achieved through the implementation of non-structural control measures, which the Group provides more specificity (as compared to the draft WMP) in Table 5-1 by providing specific start dates and additional milestones prior to 2017.</p>
<p>(4) Lower San Gabriel River</p>	<p>The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance.</p> <p>...there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met: (1) a 10% reduction in metals loads during wet weather and a 30% reduction in dry weather by 2017 and (2) a 35% reduction in metals loads during wet weather and a 70% reduction during dry weather by 2020.</p>	<p>Given the vague nature of nearly all of the "milestones" (see above), there is no direct linkage between actions, meeting interim requirements, and schedule to ensure even the 2017 targets.</p> <p>(Pages 13-14)</p>	<p>The Group's 2017 10% reduction milestone is proposed to be met entirely based on nonstructural controls. They cite:</p> <ul style="list-style-type: none"> - Expanded nonstructural MCMs in the MS4 permit (particularly Development Construction Program) - Expanded non-stormwater discharge control measures in the MS4 permit - Nonstructural targeted control measures (e.g., ordinances, increased street sweeping, promotion of downspout retrofits, etc.) <p>To track this, the nonstructural targeted control measures that the Group has developed have a compliance schedule with associated milestones.</p> <p>However, due to the nature of these measures being contingent upon political will (e.g., ordinances), public involvement (e.g., downspout retrofits), and external forces (e.g., source control regulations on metals and grant-funded based projects),</p>

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			<p>implementation of these measures carries with it a degree of uncertainty. Because of this, the Executive Officer's approval letter included a condition that the Group include, where appropriate, more definitive milestones for the nonstructural control measures listed in Table 5-1 and the structural control measures listed in Section 5.2. In the Final WMP, the Group revised milestones for the BMPs listed in Table 5-1 and included jurisdiction-specific milestones (with milestone dates from 2015 to 2017) for the construction and completion of the structural BMPs listed in Section 5.2. The Executive Officer determined that this adequately addressed the condition in the approval letter.</p>
<p>(5) Lower San Gabriel River</p>	<p>The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants. If the Group believes that that this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant.</p>	<p>As with other issues, there is no linkage between identified control measures and compliance schedule or milestones. Although there is a plausible set of measures to control zinc (and, by association, all other pollutants), there is no indication that they will ever be implemented. (Page 14)</p>	<p>There is a direct linkage between control measures and milestones since the Group commits to pollutant reduction milestones in 2017 (10%) and 2020 (35%); and a final milestone in 2026 (100% of required reduction based on the RAA). Although the specifics of the locations of the control measures are not set-in-stone, the required BMP volume capacity that the Group needs to implement are clearly set by jurisdiction and by subwatershed.</p> <p>This means that the Group is responsible for implementing a suite of control measures</p>

Watershed Management Group	Environmental Groups' Summary of Regional Board Comment on Draft WMP	Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)	Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)
			<p>that will achieve the volume capture milestones calculated from the RAA. These BMP volume capture milestones and dates for their achievement are compliance metrics for the Group. This adequately addressed Board staff's comment.</p>
<p>(6) Lower San Gabriel River</p>	<p>For dry weather, the WMP assumes a 25% reduction in irrigation (RAA, section 7.1.2). Additional support should be provided for this assumption, particularly since the group appears to be relying almost entirely on this non-structural BMP for near-term pollutant reductions to meet early interim milestones/deadlines.</p>	<p>The justification for 25% reductions may be plausible but is hardly "conservative" (as stated in the text); it also presupposed implementation of actions that would lead to such an outcome. The text also invokes emergency drought regulations as an example of how public education can reduce water use, although its applicability to long-term reductions is nowhere clarified. (Page 14-15)</p>	<p>The Group supports the 25% by citing studies that report water reductions from institution of conservation programs. They also commit to reevaluate this assumption. This adequately addressed Board staff's comment.</p> <p>As a reference, the RAA models existing condition dry-weather loads using 2003 and 2008 dry weather flows for Aug 17-Sep 30.</p>
<p>(7) Lower San Gabriel River</p>	<p>Page 6-1 notes that "[t]he final non-TMDL water quality standard compliance date is projected to be sometime in 2040." However, the pollutant reduction plan milestones in Section 5 only appear to go up to the year 2026. For watershed priorities related to addressing exceedances for receiving water</p>	<p>There are no milestones, based on measureable criteria or indicators, an explicit schedule, or a final compliance date. (Page 15)</p>	<p>The 2026 date provided by the Group is the final compliance date for the San Gabriel River Metals TMDL and, through the Group's limiting pollutant approach, the compliance date used for the Category 1, 2, and 3 pollutants identified in the WMP.</p> <p>The cited 2040 date for bacteria serves as a backup date if, through adaptive</p>

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	<p>limitations, the permit requires milestones based on measureable criteria or indicators, a schedule with dates for achieving the milestones, and a final date for achieving the receiving water limitations as soon as possible. These need to be included in the revised WMP.</p>		<p>management and future model simulations, the 2026 deadline for zinc is inadequate to control bacteria. The 2040 date is based on schedules for other bacteria TMDLs.</p> <p>As an additional note, a SGR bacteria TMDL was recently adopted by the Board and the implementation schedule provides MS4 Permittees up to 20 years from the effective date of the TMDL to achieve the wet weather TMDL wasteload allocations. When the permit is reopened or reissued, and provisions consistent with the assumptions and requirements of the SGR bacteria TMDL are incorporated, the Group will be required to revise its WMP consistent with the implementation schedule of the TMDL.</p> <p>The Executive Officer's approval letter included a condition, directing the Group to clarify the bacteria compliance schedule with the language: "If it is determined through the adaptive management process that required bacteria load reductions may not be met by controlling for zinc, then the WMP will be modified to incorporate bacteria milestones with measureable criteria or indicators consistent with any future bacteria TMDL for the San Gabriel River and with, at the latest, a final deadline of 2040." The Final WMP included this language in Section 5.4.14 on page 5-23.</p>

<p>Watershed Management Group</p>	<p>Environmental Groups' Summary of Regional Board Comment on Draft WMP</p>	<p>Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)</p>	<p>Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)</p>
<p>(8) Lower San Gabriel River</p>	<p>As proposed in the WMP, the 10% load reduction was assumed to result from the cumulative effect of nonstructural BMPs. There is uncertainty in the ability of these BMPs to meet the required reductions by September 2017.</p> <p>Additional support for the anticipated pollutant load reductions from these non-structural BMPs and source control measures over the next two to three years should be provided to increase the confidence that these measures can achieve the near-term interim WQBELs by September 2017.</p> <p>--</p> <p>Section 5 Compliance Schedule of the draft Watershed Management Plan only provided implementation schedule for non-structural targeted control measures up to 2017. The LSGR Watershed Management Group must provide measurable</p>	<p>No "additional support" was provided.</p> <p>While this issue has been acknowledged through the changes in the WMP, it has not been addressed. (Pages 15-16)</p>	<p>The Group added two additional subsections in section 4 of their WMP to provide additional support for the sufficiency of nonstructural controls to cumulatively meet the 10% load reduction milestone.</p> <p>This comment is related to previous comments regarding nonstructural BMPs.</p> <p>--</p> <p>The Group adds additional specificity to its compliance schedule in Section 5.1.</p> <p>In the sense that "measurable milestones" refer to things that are quantitative and/or definitively scheduled on a particular date, the compliance schedule may appear to be lacking. However, given the types of nonstructural controls that the Group is pursuing, anything of this nature is not likely reasonable.</p> <p>However, the schedule still provides a way to track progress towards interim and final WQBELs. The change is that, instead of preemptively setting a milestone to be met by a particular date, the Group instead will</p>

Watershed Management Group	Environmental Groups' Summary of Regional Board Comment on Draft WMP	Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment (page number of March 2015 letter noted for reference)	Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment (page number or section of revised/final WMP noted for reference)
	<p>milestones for implementing each one of the proposed control measures that will allow an assessment of progress toward the interim and final WQBELs and receiving water limitations every two years.</p>		<p>provide information on the successes and failures of its planned nonstructural controls. This gives information on whether the Group's proposed nonstructural control measures are actually having any on-the-ground impact.</p> <p>This comment is related to previous comments regarding specificity.</p> <p>The above revisions adequately addressed Board staff's comment.</p>
<p>(9) Lower San Gabriel River</p>	<p>The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program....</p>	<p>There is no evidence in either the 2015 RAA or the revised WMP that this comment was addressed. (Page 17)</p>	<p>The revised WMP does not include the same information for non-stormwater runoff; however, it includes additional information to support the assumptions used in its dry weather analysis:</p> <ul style="list-style-type: none"> - 10% nonstructural BMP assumption in Section 4.3 - 25% irrigation reduction assumption in Section 4.2.1 <p>In Section 4 of the WMP, the Group commits to re-calibrate its modeling as data is collected through its monitoring program (which includes the non-stormwater outfall screening and monitoring program).</p> <p>As explained in Section 7.1.2. of the RAA (Appendix A-4-1, pg. 51), for non-stormwater flows, the Group assumes a 10% load</p>

Watershed Management Group	Environmental Groups' Summary of Regional Board Comment on Draft WMP	Environmental Groups' Assessment of Revised WMP Responsiveness to Regional Board Comment <i>(page number of March 2015 letter noted for reference)</i>	Regional Board Staff's Assessment of Revised and Final WMP Responsiveness to Regional Board Comment <i>(page number or section of revised/final WMP noted for reference)</i>
			<p>reduction from nonstructural BMPs and a 25% reduction in irrigation, which leads to another modeled load reduction. The remaining load reduction required for dry weather is assumed to be addressed by structural BMPs.</p> <p>Since the Group is committed to recalibrate modeling with new monitoring data and evaluate the above assumptions, the revised WMP adequately addressed Board staff's comment.</p>

EXHIBIT B

**LOS ANGELES WATER BOARD'S DETAILED
RESPONSE TO PETITIONERS' CONTENTIONS IN
ADDENDUM FOR PETITION FOR REVIEW**

EXHIBIT B

Los Angeles Water Board’s Detailed Response to Petitioners’ Contentions in Addendum for Petition for Review

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
Los Angeles River Upper Reach 2 WMP		
(1) Inadequate Reasonable Assurance Analysis, Receiving Water Quality Data, Model Calibration, and Verification	The Petitioners state, <i>“On October 27, 2014, the staff provided written comments on the Los Angeles River Upper Reach 2 group’s draft WMP, which, among other things, identified and provided extensive commentary on the poor model calibration. Specifically, the staff commented that the plan did not describe how the model was calibrated in accordance with the calibration criteria set forth Table 3.0 of the Reasonable Assurance Analysis Guidelines. Moreover, no historical hydrology and water quality monitoring data were used for comparison with the model results for the baseline prediction.”</i>	This contention was previously addressed in the Los Angeles Water Board Staff’s Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) ¹ – Los Angeles River Upper Reach 2 Response 10 (pgs. 11-12) ² : <i>“Section 4.1.3.1 (Hydrology Calibration) of the Final WMP details the approach used for model calibration. It states, in part, “[a]s part of the Los Angeles County WMMS system, the LSPC module, including the Los Angeles River Watershed, was calibrated for hydrology and water quality performance. Input parameters and model settings were not modified during the LAR UR2 WMA RAA, so the original County calibration results should continue to apply; however they are partially repeated and summarized herein, with an emphasis on local or WMA applicability” (p. 75). Section 4.1.3.1 also clarifies the calibration process by stating, “[t]he County calibration documentation allows us to compare and summarize LSPC predicted and observed flows for key locations within watershed. As shown in Figure 4-1, for the Los Angeles River at Sepulveda Dam from October, 2002 to October, 2006, an average difference of 1.25% in annual stream volumes was observed placing these results within RAA Guidelines ‘very good’ range. For the period between</i>

¹ The Los Angeles Water Board Staff’s Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) is included as Exhibit A, Attachment 2.

² See RB-AR18267 - 18268.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>October 1988 and October 1992 as shown in Figure 4-2, the watershed LSPC model similarly compared favorably with downstream USGS gauge 11103000, with an average difference of only 4.37%, which is also within the ‘very good’ range.” (p. 75)</i></p> <p><i>Additionally, in the Executive Officer’s approval letter, a condition was included to provide the comparison of runoff volumes from Loading Simulation Program in C++ (LSPC) and Structural BMP Prioritization and Analysis Tool (SBPAT) as an appendix or subsection to the model calibration section. The Final WMP provided this comparison in Table 4-2 on page 89. This is a reasonable approach given available data for the LAR UR2 WMA. The approval letter also directed the LAR UR2 Watershed Management Group to refine and recalibrate its RAA based on data obtained through the Group’s CIMP, which will be specific to the LAR UR2 WMA, as part of the adaptive management process.”</i></p>
<p>(2) No Strategy to Comply with Interim WQBELs</p>	<p><i>The draft WMP does not clearly specify a strategy to comply with the interim WQBELs for the LA River metals TMDL (January 11, 2012; January 11, 2020 and January 11, 2024 deadlines). Table 3-1 presents a phased implementation plan, which suggests that Phase 2 activities will be conducted to meet the 2020 deadline and Phase 3 activities, to meet the 2024 deadline; however, the draft WMP needs to be revised to include documentation that the 2012 past</i></p>	<p>This contention was previously raised and addressed in the Staff Response to Petitioners’ Detailed Technical Comments³ on page 20⁴:</p> <p><i>“Sections 4 and 5 of the Revised WMPs were revised to add clarity and specificity to the Group’s phased implementation schedule relative to interim TMDL compliance deadlines.</i></p> <p><i>The Revised WMP also summarizes monitoring data from the LA River Metals TMDL coordinated monitoring program, which indicate that metals rarely exceed receiving water</i></p>

³ The Los Angeles Water Board Staff’s Response to Petitioners’ Detailed Technical Comments is included as Exhibit A, Attachment 1.

⁴ See RB-AR18249.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
	<p><i>deadlines have been achieved or specify an appropriate strategy for achieving compliance with the past due interim WQBELs.</i></p>	<p><i>limitations during dry-weather at monitoring stations adjacent to the LAR UR2 watershed management area. (The interim compliance deadline of 2020 for metals in dry weather is one of the nearer term deadlines for the Group.) Regarding compliance with the LA River nitrogen compounds TMDL, the Group included an expand discussion in the RAA explaining that no nitrogen pollutant reduction was required.</i></p> <p><i>The Group will further evaluate whether past interim and final deadlines have been met as data are collected through the Group’s CIMP.”</i></p> <p>This contention was also partly addressed in the <i>Staff Response to Petitioners’ Detailed Technical Comments</i> on pages 23-24⁵, which discusses how the Group demonstrates that its phased BMP implementation will meet interim WQBELs for metals and bacteria:</p> <p><i>“The Group submitted the model input and output file in in response to Board staff’s request. The revised WMP relies on a storm water volume capture approach to demonstrate compliance with WQBELs and receiving water limitations. The modeling calculated the necessary volume capture to achieve compliance with WQBELs and receiving water limitations. Section 4.3.1, Target Load Reductions, includes the calculated volume capture of the BMPs that need to be implemented to achieve compliance. Table 5-1 of the revised WMP identifies the proposed control measure implementation schedule based on the phasing needed to achieve compliance with interim and final compliance targets for both bacteria and metals. The final WMP was revised in response to a condition in the Executive Officer’s approval</i></p>

⁵ See RB-AR18252 – 18253.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>letter to modify the title of Table 5-1 to Control Measure Implementation Schedule, removing the word “tentative” from the title.”</i></p>
<p>(3) Inadequate Adaptive Management Process</p>	<p><i>While the draft WMP notes revisions will occur as part of the “Adaptive Management Process” in referral to multiple proposed actions it does not include a comprehensive strategy for the Adaptive Management process. The draft WMP should provide more detail on how the “Adaptive Management Process” will be implemented.</i></p>	<p>This contention was previously addressed in Staff’s Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Los Angeles River Upper Reach 2 Response 6 (pg. 7)⁶:</p> <p><i>“Section 1 of the revised and final WMP state, “[t]his WMP plan is a critical component of the iterative Adaptive Management Process (AMP) strategy and will be updated every two years as described in the MS4 Permit, or amended with minor corrections as warranted by changing regional precedents and the development of new scientific and technical data.” The final WMP also states in Section 4.0, “...CIMP implementation, outfall monitoring, and the adaptive management process, should allow directly applicable local LAR UR2 WMA models to be developed, tested, and calibrated based on observed data, allowing revision of this initial RAA and consideration of different pollutants, standards, and implemented watershed control measures” (p. 79). The Executive Officer also provided additional direction on the adaptive management process to all Permittees implementing a WMP in the letters approving the WMPs.”</i></p>

⁶ See RB-AR18263.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>The April 28, 2015 Approval (with Conditions) issued to the Los Angeles River Upper Reach 2 Group states on pages 6 and 7⁷:</p> <p><i>“The LAR UR2 WMG shall conduct a comprehensive evaluation of its WMP no later than April 28, 2017, and subsequently, every two years thereafter pursuant to the adaptive management process set forth in Part VI.C.8 of the Los Angeles County MS4 Permit. As part of this process, the LAR UR2 WMG must evaluate progress toward achieving:</i></p> <ul style="list-style-type: none"> • <i>Applicable WQBELs/WLAs in Attachment O of the LA County MS4 Permit according to the milestones set forth in its WMP;</i> • <i>Improved water quality in MS4 discharges and receiving waters;</i> • <i>Stormwater retention milestones; and</i> • <i>Multi-year efforts that were not completed in the current year and will continue into the subsequent year(s), among other requirements.</i> <p><i>The LAR UR2 WMG’s evaluation of the above shall be based on both progress implementing actions in the WMP and an evaluation of outfall-based monitoring data and receiving water data. Per Attachment E, Part XVIII.6 of the LA County MS4 Permit, the LAR UR2 WMG shall implement adaptive management strategies, including but not limited to:</i></p> <ul style="list-style-type: none"> • <i>Refinement and recalibration of the Reasonable Assurance Analysis (RAA) based on data specific to the LAR UR2 WMG WMP area that are collected through</i>

⁷ See RB-AR6334 – 6335.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>the LAR UR2 WMG's Coordinated Integrated Monitoring Program and other data as appropriate;</i></p> <ul style="list-style-type: none"> • <i>Identifying the most effective control measures, why they are the most effective, and how other control measures can be optimized based on this understanding;</i> • <i>Identify the least effective control measures, why they are ineffective, and how the control measures can be modified or replaced to be more effective;</i> • <i>Identify significant changes to control measures during the prior year(s) and the rationale for the changes; and</i> • <i>Describe all significant changes to control measures anticipated to be made in the next year(s) and the rationale for each change.</i> <p><i>As part of the adaptive management process, any modifications to the WMP, including any requests for extension of deadlines not associated with TMDL provisions, must be submitted to the Los Angeles Water Board for review and approval. The Permittees of the LAR UR2 WMG must implement any modifications to the WMP upon approval by the Los Angeles Water Board or its Executive Officer, or within 60 days of submittal of modifications if the Los Angeles Water Board or its Executive Officer expresses no objections. Note that the Permittees' Report(s) of Waste Discharge (ROWD) is due no later than July 1, 2017. To align any modifications to the WMP proposed through the adaptive management process with permit reissuance, results of the first adaptive management cycle should be submitted in conjunction with the Permittees' ROWD."</i></p>

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
<p>(4) No Commitment to Meeting Interim Milestones and Final Deadlines</p>	<p>The Petitioners contend: The initial draft WMP submitted by the Los Angeles River Upper Reach 2 watershed group on June 26, 2014 failed to commit to any schedule for achieving interim milestones and final deadlines as required by the Permit (2012 Permit, at Part VI.C.5.c.), yet the Regional Board staff did not raise the issue in their October 27, 2014 comments.</p>	<p>This contention was not previously raised in this manner in the Petition. In response, the Los Angeles River Upper Reach 2 WMP Group’s compliance schedule is largely based on TMDL implementation milestones, which the Group explicitly lists in Table 1-6 (pg. 18), Section 4.3 (pg. 96), and Appendix C of the Final WMP⁸.</p> <p>The Group incorporates these applicable TMDL compliance dates into its RAA analysis as it states in Section 4.6 (pg. 113) of its Final WMP⁹:</p> <p><i>“[The RAA] indicates that for each pollutant of concern, the load reductions anticipated by the average cumulative BMP implementation strategy will exceed the final total load reductions, <u>and the phased BMP load reductions also meet the interim compliance targets (i.e., 50% of final metal TLRs by 2024).</u>” [underlined for emphasis]</i></p> <p>Furthermore, the Group uses a limiting pollutant approach, as indicated in Section 4.5 (pg. 113)¹⁰:</p> <p><i>“Bacteria was found to be the driving (or limiting) pollutant for the Los Angeles River drainage area, and zinc was the driving pollutant for the Rio Hondo drainage area.”</i></p> <p>The language in the WMP that appears to “condition” implementation schedules is more or less a restatement of provisions already contained in the Permit allowing Permittees to request of the Executive Officer approval for changes to some compliance schedules. For example, the Group notes</p>

⁸ See RB-AR6363; RB-AR6441; RB-AR6499.

⁹ See RB-AR6458.

¹⁰ *Ibid.*

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>that dates are “subject to the procurement of grants or other financing support” in Section 5 (pg. 116)¹¹:</p> <p><i>“Interim and final compliance dates in the LAR Metals and Bacteria TMDLs are the primary drivers for the LAR UR2 WMA RAA and WMP Plan implementation schedule. The dates identified in this WMP Plan are subject to the procurement of grants or other financing support commensurate with the existing and future fiduciary responsibilities of the Permittees. They may furthermore be adjusted based on evolving information developed through the iterative adaptive management process identified in the 2012 MS4 Permit or similar Parts within future MS4 Permits.”</i></p> <p>However, the above ultimately relies on the Adaptive Management Process provisions of the LA County MS4 Permit as outlined in Section VI.C.8.a.ii (pg. 69)¹²:</p> <p><i>“Based on the results of the adaptive management process, Permittees shall report any modifications, including where appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.”</i></p> <p>Furthermore, the Adaptive Management <u>does not</u> automatically let Permittees change deadlines. Changes have to go through</p>

¹¹ See RB-AR6461.

¹² See RB-AR713.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>the Los Angeles Water Board Executive Officer as noted in Section VI.C.8.a.iii of the LA County MS4 Permit¹³:</p> <p><i>“Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.”</i></p> <p>Another section of the Los Angeles River Upper Reach 2 WMP that has similar language is Section 5.1 (pg. 116)¹⁴, which states:</p> <p><i>“The WMP, including the schedule aspect, will be updated through the adaptive management process; to that extent, the implementation schedules identified are tentative <u>unless determined as a date certain associated with specific TMDL provisions. Any LAR UR2 WMA WMP schedule date extensions must be approved by the Los Angeles Water Board’s Executive Officer pursuant to Part VI.C.6.a or Part VI.C.8.a.ii-iii of the 2012 MS4 Permit.</u>” [underlined for emphasis]</i></p> <p>The Group’s statement that the implementation schedules identified are “tentative” in this context are based on the Group’s understanding of the Adaptive Management Process and is ultimately immaterial with respect to how Los Angeles Water Board Staff views the Group’s WMP deadlines—i.e. Los Angeles Water Board Staff sees the WMP Implementation Schedule contained in the Final WMP as the schedule the Group must follow unless an extension of the schedule is</p>

¹³ See RB-AR713.

¹⁴ See RB-AR6461.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>approved in accordance with the LA County MS4 Permit.</p> <p>If the Group is not approved for an extension and the Group fails to follow its implementation schedule then <u>it will not be able</u> to use the alternative compliance path for achieving receiving water limitations that is provided through WMP implementation.</p> <p>The Los Angeles Water Board explicitly expressed how it will determine WMP compliance to the Los Angeles River Upper Reach 2 Group in its April 28, 2015 Approval (with Conditions) Letter (pg. 5)¹⁵:</p> <p><i>“Pursuant to Part VI.C.6 of the LA County MS4 Permit, the Permittees of the LAR UR2 WMG shall begin implementation of the approved WMP immediately. To continue to be afforded the opportunity to implement permit provisions within the framework of the WMP, Permittees must fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP (e.g., funding and purported reservation of rights) unless a modification to the approved WMP, including any extension of deadlines where allowed, is approved by the Los Angeles Water Board pursuant to Part VI.C.6.a or Part VI.C.8.a.ii-iii. The Los Angeles Water Board will determine the LAR UR2 WMG Permittees’ compliance with the WMP on the basis of the compliance actions and milestones included in the WMP, including, but not limited to, the following:</i></p> <ul style="list-style-type: none"> • <i>Section 3 “Watershed Control Measures,” including</i>

¹⁵ See RB-AR6333.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>Section 3.3 "Proposed Control Measures;"</i></p> <ul style="list-style-type: none"> • <i>Table 3-1 "LAR Metals TMDL Jurisdictional Group 2 Non-Structural BMPs Phased Implementation Plan;"</i> • <i>Table 3-8 "Potential Non-Structural BMP Enhanced Implementation Efforts;"</i> • <i>Table 4-10 "LID Street Required Tributary area by LAR UR2 WMA Permittee;"</i> • <i>Tables 4-17 to 4-20, which present load reductions associated with non-structural BMPs, regional BMPs, and distributed BMPs;</i> • <i>Table 5-1 "Tentative Control Measure Implementation Schedule" which establishes the implementation dates for non-structural BMPs, regional BMPs, and distributed BMPs; and</i> • <i>Additional compliance actions and milestones established in response to Conditions 1, 2, 8 and 9, above.</i> <p><i>Pursuant to Parts VI.C.3 and VI.E.2.d.i.(4)(a) of the LA County MS4 Permit, the LAR UR2 WMG Permittees' full and timely compliance with all actions and dates for their achievement in their approved WMP shall constitute compliance with permit provisions pertaining to applicable WQBELs/WLAs in Part VI.E and Attachment O of the LA County MS4 Permit. Further, per Part VI.C.2.b of the LA County MS4 Permit, the LAR UR2 WMG Permittees' full compliance with all requirements and dates for their achievement in their approved WMP constitutes compliance with the receiving water limitations provisions of Part V.A of the LA County MS4 Permit for the specific waterbody-pollutant combinations addressed by their approved WMP.</i></p> <p><i>If the Permittees in the LAR UR2 WMG fail to meet any</i></p>

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>requirement or date for its achievement in the approved WMP, which will be demonstrated through the LAR UR2 WMG's Annual Reports and program audits (when conducted), the Permittees in the LAR UR2 WMG shall be subject to the baseline requirements of the LA County MS4 Permit, including demonstrating compliance with applicable receiving water limitations and TMDL-based WQBELs/WLAs through outfall and receiving water monitoring. See Parts VI.C.2.c and VI.E.2.d.i.(4)(c)."</i></p> <p>Furthermore, it should be emphasized that under the MS4 Permit, the Group <u>cannot</u> request an extension of final compliance deadlines established in a TMDL as stated in Section VI.C.6.a of the Permit¹⁶:</p> <p><i>"Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii."</i></p> <p>For these reasons, the cited issue is not a specific issue of the WMP as approved. The Group is ultimately relying on provisions of the LA County MS4 Permit to provide scheduling flexibility, however these permit provisions themselves are not automatic, but rather have <u>defined processes</u> that must be followed.</p>

¹⁶ See RB-AR711.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
Lower San Gabriel River WMP		
<p>(1) No Clear Schedule to Demonstrate that Compliance will be Achieved "as Soon as Possible"</p>	<p><i>Where data indicate impairment or exceedances of RWLs and the findings from the source assessment implicate discharges from the MS4, the Permit requires a strategy for controlling pollutants that is sufficient to achieve compliance as soon as possible. Although Section 3 includes a compliance strategy, the program needs to more clearly demonstrate that the compliance schedule (Section 5) ensures compliance is "as soon as possible."</i></p> <p><i>The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. The WMP schedule should at the least provide specificity on actions within the current and next permit terms.</i></p> <p><i>...it would be reasonable to update the WMP to contain project milestones and implementation timeframes for projects that will be implemented under this grant.</i></p>	<p>The Group commits to a compliance schedule with a final compliance date of 2026 that is based on its RAA. This RAA uses a "limiting pollutant" approach that is meant to address applicable TMDL compliance schedules as well as other pollutants, including pollutants with RWLs that are not addressed by TMDLs.</p> <p>This RAA, and the resulting compliance schedule, are not based on financial terms.</p> <p>Given that the Group continues to seek funding for the projects needed for its current compliance schedule, which deals with the highest priority TMDL pollutants, it is reasonable to conclude that the Group cannot commit to (and substantiate) additional expedited compliance schedules for certain non-TMDL pollutants.¹⁷ The Group themselves note in the revised WMP the "aggressiveness" of the compliance schedule that they have already proposed. Evaluating the Group's response in conjunction with what the Group has already committed to and what other Groups have committed to, Staff did not find that there was reason to require further expedited compliance schedules for non-TMDL pollutants from the Group.</p> <p>--</p> <p>Previously, this contention was previously addressed in Staff's <i>Assessment of NRDC/LAWK/HTB March 25, 2015 Letter</i></p>

¹⁷ Furthermore, for many of these non-TMDL pollutants the Group has noted (in Table 2-20 of the WMP) that it is "unable to determine at this time" whether the pollutant is associated with MS4 discharges.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 1 (pgs. 20-23)¹⁸:</i></p> <p><i>“The Group reasonably justifies that their strategy will achieve compliance with receiving water limitations (RWLs) as soon as possible.</i></p> <p><i>The WMP conveys the uncertainty and financial hurdles faced by the Group as well as the fact that the Group must control several different pollutants, including pollutants specified in TMDLs.</i></p> <p><i>The Group’s strategy of controlling other pollutants as it implements its schedule to control the limiting pollutant zinc through nonstructural control measures and structural control measures is sound and consistent with the Board’s integrated water resources approach to TMDL implementation, which is characterized by implementation measures that address multiple pollutants and achieve other benefits. The Group provides a pollutant reduction plan with interim milestones that specifies BMP volume capacity compliance targets that the Group must meet. These targets are specified at the jurisdictional and subwatershed levels (see Attachment B to the RAA – Detailed Jurisdictional Compliance Tables).</i></p> <p><i>The Group’s comment about conversion of land and acquisition is with regards to regional BMPs. However, it should be noted that the potential initial scenario of control measures presented in the Group’s pollutant reduction plan specifies BMP capacity to be installed through right-of-way BMPs and LID BMPs on public parcels, leaving a remaining</i></p>

¹⁸ See RB-AR18276 – 18279.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>BMP volume to be handled through "Potentially Regional BMPs," provided in the WMP's RAA (shown in Tables 9-6 and 9-7), constituting only ~2% of the BMP capacity to be installed.</i></p> <p><i>Right-of-Way BMP volume = 94.8 acre-feet (af) Estimated LID on Public Parcels = 21.8 af Remaining BMP Volume/Potentially Regional BMP = 2.2 af</i></p> <p><i>The Group provides specificity in its control measures by specifying the number of BMPs to be implemented in terms of BMP capacity volume. It then provides milestones for the installation of this BMP capacity volume.</i></p> <p><i>The Group commits to achieving milestones on page 5-5 stating: "...over time the Watershed Group will report and demonstrate that the summative effects of projects implemented add up to the required reductions for interim milestones and final targets."</i></p> <p><i>Taken altogether, the above information addressed Board staff's comment.</i></p> <p><i>Regarding the starting dates for nonstructural BMPs in Table 5-1, the cited start dates were specified as ranges in the draft WMP. For example the start date for "Enhanced tracking through use of online GIS MS4 Permit database" was 2014-2017. These dates were modified to be more specific in the revised WMP and to include associated milestones to track progress. To address instances where a milestone date was not specific, the Executive Officer's approval letter included a condition that the Group modify the milestone. The Executive Officer determined that the</i></p>

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>Final WMP addressed this condition.</i></p> <p>Regarding the cited excerpt:</p> <p><i>"...it would be reasonable to update the WMP to contain project milestones and implementation timeframes for projects that will be implemented under this grant,"</i></p> <p>The Final WMP clearly includes project milestones and implementation timeframes requested in Section 5.2 (pgs. 5-4 through 5-5)¹⁹.</p>
<p>(2) No Commitment or Demonstration that Compliance with Receiving Water Limitations for Pollutants Not Addressed by TMDLs will be Achieved As Soon as Possible</p>	<p><i>For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible. The RAA demonstrates the control measures would be adequate to comply with the limitations/deadlines for the "limiting pollutants" for TMDLs and concludes that this will ensure compliance for all other pollutants of concern. However, it does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.</i></p>	<p>This contention is addressed in the above response as was stated in Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 2 (pg. 23)²⁰:</p> <p><i>"The Group responds to this comment in Section 5 of the WMP through its justification that their strategy is "as soon as possible." This comment is a corollary to the above comment and is sufficiently addressed."</i></p>

¹⁹ See RB-AR15685 – 15686.

²⁰ See RB-AR18279.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
<p>(3) Insufficient Specificity with Regard to Structural and Non-Structural BMPs</p>	<p><i>The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.</i></p>	<p>This contention was previously addressed in Staff’s Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 3 (pg. 23-24)²¹:</p> <p><i>“The Group commits to the compliance milestones that are to be achieved through a mixture of structural BMPs, including green street conversion.</i></p> <p><i>Compliance with the 2017 first-term milestone is planned to be achieved through the implementation of non-structural control measures, which the Group provides more specificity (as compared to the draft WMP) in Table 5-1 by providing specific start dates and additional milestones prior to 2017.”</i></p> <p>Furthermore, the Lower San Gabriel River Group states in their revised WMP (page 5-6)²²:</p> <p><i>“Even though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to constructing the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules”</i></p> <p>Staff interprets this as an explicit commitment that responds directly to the original staff comment of <i>“[a]lthough it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.”</i></p>

²¹ See RB-AR18279 – 18280.

²² See RB-AR14646.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
(4) Insufficient Specificity with Regard to the Achievement of Interim Milestones for TMDLs	<i>In a number of cases, additional specificity on the number, type and general location(s) of watershed control measures well as the timing of implementation for each (emphasis added) is needed... there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met (1) a 10% reduction in metals loads during wet weather and a 30% reduction in dry weather by 2017 and (2) a 35% reduction in metals loads during wet weather and a 70% reduction during dry weather by 2020.</i>	<p>This contention was previously addressed in Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 4 (pgs 24-25)²³:</p> <p><i>“The Group’s 2017 10% reduction milestone is proposed to be met entirely based on nonstructural controls. They cite:</i></p> <ul style="list-style-type: none"> - <i>Expanded nonstructural MCMs in the MS4 permit (particularly Development Construction Program)</i> - <i>Expanded non-stormwater discharge control measures in the MS4 permit</i> - <i>Nonstructural targeted control measures (e.g., ordinances, increased street sweeping, promotion of downspout retrofits, etc.)</i> <p><i>To track this, the nonstructural targeted control measures that the Group has developed have a compliance schedule with associated milestones.</i></p> <p><i>However, due to the nature of these measures being contingent upon political will (e.g., ordinances), public involvement (e.g., downspout retrofits), and external forces (e.g., source control regulations on metals and grant-funded based projects), implementation of these measures carries with it a degree of uncertainty. Because of this, the</i></p>

²³ See RB-AR18280 – 18281.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>Executive Officer's approval letter included a condition that the Group include, where appropriate, more definitive milestones for the nonstructural control measures listed in Table 5-1 and the structural control measures listed in Section 5.2. In the Final WMP, the Group revised milestones for the BMPs listed in Table 5-1 and included jurisdiction-specific milestones (with milestone dates from 2015 to 2017) for the construction and completion of the structural BMPs listed in Section 5.2. The Executive Officer determined that this adequately addressed the condition in the approval letter."</i></p>
<p>(5) Lack of Measureable Milestones to Evaluate Compliance</p>	<p><i>The LSGR Watershed Management Group must provide measureable milestones for implementing each one of the proposed control measures that will allow an assessment of progress toward the interim and final WQBELs and receiving water limitations every two years.</i></p>	<p>Section 5.4 (pgs. 5-9 to 5-23) of the Lower San Gabriel River WMP²⁴ lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2020, and 2026. These BMP capacities are taken directly from the WMP's RAA.</p> <p>If a Permittee does not achieve these BMP volume capacities by a milestone date, they are not in compliance with their WMP. Furthermore, these volumes allow for an assessment of progress toward interim and final WQBELs and receiving water limitations every two years.</p> <p>This contention was also previously addressed, particularly with respect to nonstructural BMPs, in Staff's <i>Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower San Gabriel River Response 8</i> (pgs. 28-29)²⁵:</p> <p><i>"The Group added two additional subsections in section 4 of</i></p>

²⁴ See RB-AR15690 - 15704.

²⁵ See RB-AR18284 - 18285.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>their WMP to provide additional support for the sufficiency of nonstructural controls to cumulatively meet the 10% load reduction milestone.</i></p> <p><i>This comment is related to previous comments regarding nonstructural BMPs.</i></p> <p><i>--</i></p> <p><i>The Group adds additional specificity to its compliance schedule in Section 5.1.</i></p> <p><i>In the sense that "measureable milestones" refer to things that are quantitative and/or definitively scheduled on a particular date, the compliance schedule may appear to be lacking. However, given the types of nonstructural controls that the Group is pursuing, anything of this nature is not likely reasonable.</i></p> <p><i>However, the schedule still provides a way to track progress towards interim and final WQBELs. The change is that, instead of preemptively setting a milestone to be met by a particular date, the Group instead will provide information on the successes and failures of its planned nonstructural controls. This gives information on whether the Group's proposed nonstructural control measures are actually having any on-the-ground impact.</i></p> <p><i>This comment is related to previous comments regarding specificity.</i></p> <p><i>The above revisions adequately addressed Board staff's comment."</i></p>

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
(6) Unenforceable and Contingent Volumetric Reduction Targets	<p>The Petitioners contend: Confronted by Petitioners with the Lower San Gabriel River WMP’s lack of commitment to meeting interim milestones and final compliance deadlines at the September 10, 2015 Regional Board public meeting, the Board staff responded that they interpreted the volumetric reductions set forth in the WMPs as enforceable requirements. The staff went on to assert that failure to meet these volumetric reductions on time would be a Permit violation, subject to enforcement by the Regional Board, U.S. EPA, and the affected public. The volumetric reductions in the Lower San Gabriel River WMP, however, are conditioned on obtaining funding; and, for pollutants not addressed by a TMDL, any deadlines are tentative at best. As soon as Permittees of the Lower San Gabriel River group demonstrate a failure to obtain funding for WMP implementation, the volumetric reduction requirements will be effectively rendered unenforceable. Given the financial constraints and conflicting priorities municipalities consistently complain of, a claim of failure to secure funding for WMP</p>	<p>This contention was not previously raised. In response, as noted in Section VI.C.3.b of the LA County Permit²⁶:</p> <p><i>“A Permittee’s full compliance with all requirements and dates for their achievement in an approved Watershed Management Program or EWMP shall constitute a Permittee’s compliance with the receiving water limitations provisions in Part V.A of this Order for the specific water body-pollutant combinations addressed by an approved Watershed Management Program or EWMP.”</i></p> <p>This continues in Section VI.C.3.c of the LA County Permit²⁷:</p> <p><i>“If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A for the waterbody-pollutant combination(s) that were to be addressed by the requirement. For waterbody-pollutant combinations that are not addressed by a TMDL, final compliance with receiving water limitations is determined by verification through monitoring that the receiving water limitation provisions in Part V.A.1 and 2 have been achieved.”</i></p> <p>Therefore, if a Permittee failed to meet a volumetric reduction</p>

²⁶ See RB-AR697.

²⁷ *Ibid.*

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
	<p>implementation is a virtual certainty. Permittees of the Lower San Gabriel River watershed group should not be allowed to evade enforceable requirements of the Permit; therefore, a final WMP containing such wavering and uncertain commitment should have been denied.</p> <p>The final WMP for the Lower San Gabriel River fails to comply with explicit Permit requirements for what ought to be included in a WMP for Regional Board approval. The WMP, therefore, should have been denied as required by the Permit. As such, the Regional Board’s action on September 10, 2015 to ratify the Lower San Gabriel River final WMP was inappropriate, improper, and an abuse of discretion.</p>	<p>milestone, that Permittee would have to demonstrate compliance with provisions pertaining to applicable interim water quality based effluent limitations and interim receiving water limitations <u>outside</u> of the WMP’s alternative compliance path—otherwise be subject to enforcement.</p> <p>In other words, if a Permittee failed to meet a volumetric reduction milestone, the Group would not be able to use the alternative compliance path for achieving receiving water limitations that is provided through WMP implementation.</p> <p>Regarding the contention, staff does not agree with the assertion that the Lower San Gabriel River WMP is unenforceable and its deadlines are conditioned on funding.</p> <p>It is true that the Group discusses funding difficulties in their Final WMP. However, there is no language that conditions milestones as “contingent on funding” in the pages referenced in the Petition Addendum.</p> <p>Section 5, “Compliance Schedule” (pg. 5-1) of the Lower San Gabriel River WMP states²⁸:</p> <p><i>“Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition,</i></p>

²⁸ See RB-AR15682.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>when required). As such the Group considers the compliance schedule to be as short as possible."</i></p> <p>Section 6, "Financial Strategy" (pg. 6-1) of the Lower San Gabriel River WMP states²⁹:</p> <p><i>"Financing the implementation of the Lower SGR WMP is the greatest challenge confronting the Watershed Group. In the absence of stormwater utility fees, the Participating Agencies have no dedicated revenue stream to pay for implementation of the WMP. In addition to current uncertainties associated with costs and funding, there are multiple uncertainties associated with future risks. The first TMDL compliance dates for the Lower SGR Watershed Group will be the interim metals milestones of 2017, 2020, and the final compliance date of September 30, 2026. Thus, there will be many deadlines that must be met despite limited resources. Member Agencies will need to set priorities and seek funding in order to meet the various compliance deadlines."</i></p> <p>The above statements are a statement of the "reality" that the Group members face with respect to funding stormwater-related projects. This "reality" has been echoed by several other (if not all) Permittees³⁰.</p> <p>This reality however, is not a contingency. If the Group is not compliant with its WMP, then <u>it will</u> be subject to enforcement for any violations of applicable effluent limitations or receiving water limitations. The Group's statements of concern do not</p>

²⁹ See RB-AR15711.

³⁰ The expense of implementing WMPs give a rough indication of how "dedicated" the programs actually are. The Lower San Gabriel River WMP calls for a total structural BMP capacity of 118.6 acre-feet and total estimated costs of \$34,630,000 to \$64,630,000.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>constitute built-in mechanisms for WMP milestone date and compliance deadline extensions.</p> <p>If the Group would like an extension for a schedule contained in its WMP, there are explicit provisions outlined in the LA County MS4 Permit through which Groups may request extensions of WMP milestone dates and compliance deadlines.</p> <p>Section VI.C.6.a of the Permit³¹ outlines that, with the exception of final compliance deadlines established in a TMDL, a WMP Group may request extensions of deadlines for achievement of interim milestones and final compliance deadlines:</p> <p><i>“Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.iii.”</i></p> <p>Additionally, the LA County MS4 Permit's Adaptive Management Process allows for the establishment of new compliance deadlines and interim milestones, as noted in Section VI.C.8.a.ii (pgs. 68-69)³²:</p> <p><i>“Based on the results of the adaptive management process, Permittees shall report any modifications, including where</i></p>

³¹ See RB-AR711.

³² See RB-AR712 – 713.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>appropriate new compliance deadlines and interim milestones, with the exception of those compliance deadlines established in a TMDL, necessary to improve the effectiveness of the Watershed Management Program or EWMP in the Annual Report, as required pursuant to Part XVIII.A.6 of the MRP (Attachment E), and as part of the Report of Waste Discharge (ROWD) required pursuant to Part II.B of Attachment D – Standard Provisions.”</i></p> <p>These modifications in the Adaptive Management must go through the process outlined in Section VI.C.8.a.iii of the LA County MS4 Permit³³:</p> <p><i>“Permittees shall implement any modifications to the Watershed Management Program or EWMP upon approval by the Regional Water Board Executive Officer or within 60 days of submittal if the Regional Water Board Executive Officer expresses no objections.”</i></p> <p>The above provisions are the mechanisms outlined in the Permit for which the Lower San Gabriel River WMP Group may extend the milestones listed in its WMP. As can be seen in the provisions, these mechanisms require the action of the Regional Water Board Executive Officer. However, none of these described actions have taken place.</p> <p>The Los Angeles Water Board explicitly expressed to the Lower San Gabriel WMP Group how it will determine WMP compliance in its April 28, 2015 Approval, with Conditions Letter (pgs. 4-5)³⁴:</p>

³³ See RB-AR713.

³⁴ See RB-AR15522 – 15523.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>"Pursuant to Part VI.C.6 of the LA County MS4 Permit and Part VII.C.6 of the Long Beach MS4 Permit, the Permittees of the LSGR WMG shall begin implementation of the approved WMP immediately. To continue to be afforded the opportunity to implement permit provisions within the framework of the WMP, Permittees must fully and timely implement all actions per associated schedules set forth in the approved WMP regardless of any contingencies indicated in the approved WMP (e.g., funding) unless a modification to the approved WMP, including any extension of deadlines where allowed, is approved by the Los Angeles Water Board pursuant to Part VI.C.6.a or Part VI.8.a.ii-iii of the LA County MS4 Permit, and/or Part VII.C.6 or Part VII.C.8.b-c of the Long Beach MS4 Permit. The Los Angeles Water Board will determine the LSGR Permittees' compliance with the WMP on the basis of the compliance actions and milestones included in the WMP, including, but not limited to, the following:</i></p> <ul style="list-style-type: none"> <i>• Pollutant Reduction Plan to Attain Interim & Final Limits (Section 5.4)</i> <i>• Nonstructural Best Management Practices Schedule (Section 5.1)</i> <i>• Table 3-2 New Fourth Term MS4 Permit Nonstructural MCMs (Cities only) and NSWDM Measures (Section 3.2.4)</i> <i>• Table 3-5 Nonstructural TCMs (Section 3.4.1)</i> <i>• Proposition 84 Grant Award LID BMPs (Section 5.2)</i> <i>• Structural Best Management Practice Schedule</i>

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p>(Section 5.3)</p> <ul style="list-style-type: none"> • <i>RAA Attachment B: Detailed Jurisdictional Compliance Tables</i> <p><i>Pursuant to Parts VI.C.3 and VI.E.2.d.i.(4)(a) of the LA County MS4 Permit³⁵, the LSGR Permittees' full and timely compliance with all actions and dates for their achievement in their approved WMP shall constitute compliance with permit provisions pertaining to applicable WQBELs/WLAs in Part VI.E and Attachments N and P of the LA County MS4 Permit.³⁶ Further, per Part VI.C.2.b of the LA County MS4 Permit and Part VII.C.2.e of the Long Beach MS4 Permit, the LSGR Permittees' full compliance with all requirements and dates for their achievement in their approved WMP constitutes compliance with the receiving water limitations provisions of Part V.A of the LA County MS4 Permit and Part VI.A of the Long Beach MS4 Permit for the specific waterbody-pollutant combinations addressed by their approved WMP.</i></p> <p><i>If the Permittees in the LSGR WMG fail to meet any requirement or date for its achievement in the approved WMP, which will be demonstrated through the LSGR WMG's Annual Reports and program audits (when conducted), the Permittees in the LSGR WMG shall be subject to the baseline requirements of the LA County MS4 Permit and the Long Beach MS4 Permit, including demonstrating</i></p>

³⁵ Corresponding provisions in the Long Beach MS4 Permit are Parts VII.C.3 and VIII.E.1.d.

³⁶ Corresponding provisions in the Long Beach MS4 Permit are Part VIII (general TMDL provisions) and Parts VIII.P and VIII.Q (provisions specific to the Greater Harbors and San Gabriel River Watershed TMDLs).

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>compliance with applicable receiving water limitations and TMDL-based WQBELs/WLAs through outfall and receiving water monitoring. See Parts VI.C.2.c and VI.E.2.d.i.(4)(c) of the LA County MS4 Permit, and Parts VII.C.2.f and VIII.E.1.d.iii of the Long Beach MS4 Permit."</i></p>
<p>Lower Los Angeles River WMP</p>		
<p>(1) No Clear Schedule to Demonstrate that Compliance will be Achieved "as Soon as Possible"</p>	<p><i>Where data indicate impairment or exceedances of RWLs and the findings from the source assessment implicate discharges from the MS4, the Permit requires a strategy for controlling pollutants that is sufficient to achieve compliance as soon as possible. Although Section 3 includes a compliance strategy, the program needs to more clearly demonstrate that the compliance schedule (Section 5) ensures compliance is "as soon as possible."</i></p>	<p>This contention was previously addressed in Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower Los Angeles River Response 3 (pgs. 14-15)³⁷:</p> <p><i>The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures."</i></p> <p><i>The revised WMP provides an estimate of the cost of structural BMPs, and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP.</i></p>

³⁷ See RB-AR18270 – 18271.

Contention	Petitioners’ Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
		<p><i>This additional clarification is a sufficient response to the comment. The Group’s existing strategy to control pollutants “as soon as possible” is sound.</i></p>
<p>(2) No Commitment or Demonstration that Compliance with Receiving Water Limitations for Pollutants Not Addressed by TMDLs will be Achieved As Soon as Possible</p>	<p><i>For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible. The RAA demonstrates the control measures would be adequate to comply with the limitations/deadlines for the “limiting pollutants” for TMDLs and concludes that this will ensure compliance for all other pollutants of concern. However, it does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.</i></p>	<p>This contention was previously addressed in Staff’s Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) – Lower Los Angeles River Response 4 (pg. 15)³⁸:</p> <p><i>This comment is similar to the above comment that compliance schedules for non-TMDL pollutants are “as soon as possible.” The clarification provided by the Group in Section 5 (pg. 5-1) of the revised WMP on how the Group’s strategy for meeting load reductions determined in the RAA is an aggressive compliance schedule is sufficient with respect to this comment.</i></p>
<p>(3) Insufficient Specificity with Regard to Structural and Non-Structural BMPs</p>	<p><i>The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the</i></p>	<p>This contention was previously raised and addressed in the Staff Response to Petitioners’ Detailed Technical Comments on pages 2-3³⁹:</p> <p><i>As originally contained in the draft WMP, Section 5.4 (pg. 5-7) lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2024, and 2028. These BMP capacities are taken directly from the</i></p>

³⁸ See RB-AR18271.

³⁹ See RB-AR18231 – 18232.

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
	<p><i>necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.</i></p>	<p><i>WMP's reasonable assurance analysis (RAA) analysis.</i></p> <p><i>If a Permittee does not achieve these BMP volume capacities by a milestone date, they are not in compliance with their WMP.</i></p> <p><i>Further, as stated above, Section 5.2 (pg. 5-4) lists structural LID BMPs that are to be constructed within this permit term. Section 5.3 (pg. 5-4) was revised to include a schedule of feasibility studies and site assessments for regional projects. However, the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the LID BMPs. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5).</i></p> <p><i>The Group has conveyed to Board staff that the information contained in Section 5 is the maximum practicable given uncertainties and that greater certainty will be provided through the adaptive management process.</i></p> <p><i>This adequately addressed Board staff's comment.</i></p>

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
<p>(4) Unenforceable and Contingent Volumetric Reduction Targets</p>	<p>The Petitioners contend: In responding to Petitioners' argument on September 10, 2015 about the Lower Los Angeles River WMP's lack of commitment to meeting interim milestones and final compliance deadlines, Regional Board staff stated that the volumetric reductions set out in the final WMP represent an enforceable commitment from the Permittees. In other words, failure to meet these volumetric reductions in accordance with the provided schedule would be non-compliance, at which point Permittees could be subject to enforcement by the Regional Board, U.S. EPA, and the affected public. However, like the Lower San Gabriel River WMP, the volumetric reductions in the Lower Los Angeles River WMP are also expressly conditioned on obtaining funding; and, for pollutants not addressed by a TMDL, any deadlines are tentative at best. If Permittees of the Lower Los Angeles River group demonstrate a failure to obtain funding for WMP implementation, the volumetric reduction requirements will be effectively rendered unenforceable. Given the financial constraints and conflicting priorities municipalities consistently complain of, a claim of failure to secure funding for WMP implementation is a virtual certainty. Permittees of the Lower Los Angeles River watershed group should not be allowed to evade enforceable requirements of the Permit, thus their final WMP, by having such</p>	<p>See Lower San Gabriel River WMP Response (4)</p>

Contention	Petitioners' Summary of Los Angeles Water Board Comment on Draft WMP or New Contention	Response
	<p>uncertain language, should have been denied.</p> <p>The Lower Los Angeles River WMP fails to comply with core program development requirements pursuant to the 2012 Permit. As a result, the WMP cannot ensure the appropriate rigor, accountability, and transparency to put Permittees on an alternative path toward the achievement of water quality goals. The Lower Los Angeles River WMP should have been denied, as required by the Permit, and therefore Permittees would have had to immediately demonstrate compliance with receiving water limitations. Instead, however, Permittees of the Lower Los Angeles River watershed group are given "safe harbor" benefits as a result of their WMP approval, thereby allowing them to continue discharging highly polluted stormwater for years to come.</p>	

EXHIBIT C

**LOS ANGELES WATER BOARD'S DETAILED
RESPONSE TO EXHIBIT B OF THE PETITIONER'S
ADDENDUM**

LAR UR2	Index LLAR	INDEX LSGR	Permit Citation	Board Comments from October 30, 2014	Analysis of Revised WMP (January 30, 2015) in response to Board Comments	Conditional Approval Requirements (April 28, 2015)	Analysis of Final WMP (June 12, 2015)	In LSGR Response Letter #2	Analysis of Response Letter statements	Staff Response (August 2015)	Analysis of Staff Response	Staff Response (January 2016)
1	1	1	Part VI.C.1.d (Purpose of Watershed Management Program)	Section 1.1 of the draft WMP states, "the goal of these requirements is to reduce the discharge of pollutants from MS4s to the maximum extent practicable." The goal of the three permits and of a WMP is broader than presented (p. 1-1). Per...the LA County MS4 Permit...The programs shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1." The revised WMP needs to acknowledge the broader goals set forth in the permit.	Section 1.1 now paraphrases the above-stated goals of the Regional Board, and as in the Draft WMP further notes that "The ultimate goals of the WMP are listed in Section 1.2.3." However, no mention in either draft of the WMP includes the last concern of the Board, that "controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1."	No additional requirement to address October 30, 2014 Board comment.	No change.					Both Section 1.1 [see RB-AR15540] and Section 1.2.4 [see RB-AR15547] of the Final WMP clearly state: "[E]nsure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable." Additionally, Section 1.2.4 includes a footnote that references Part IV.A.1 of the Permit. The Petitioners misconstrued Board staff's October 2014 comment, which was focused on ensuring that the WMP stated the water quality goals of the permit and WMPs, not just the "technology based" goal of reducing the discharge of pollutants to the maximum extent practicable. The Final WMP states in Sections 1.2.3-1.2.4 [see RB-AR15547] the water quality goals of the permit and WMPs.
2	2	2	Part VI.C.5.a.i.(1) (Category 1 Pollutants)	The MS4 permit requires WMPs to include the applicable numeric WQBELs for each approved TMDL within the WMA. These should be clearly listed within the WMP. They are currently identified in the RAA in Tables 5-4 and 5-5, but do not appear presented in the main document.	This has been added as Table 2-3 (p. 2-6).							
3	3	3	Part VI.C.5.a.i.(2)-(3) (Categories 2 and 3 Pollutants)	The WMP needs to specify the applicable receiving water limitations for Category 2 water body pollutant combinations. These should be clearly listed within the WMP. It appears these are listed in Tables 2-3 to 2-11 in association with monitoring site specific summaries of exceedances of water quality objectives; however, it would provide greater clarity to also summarize them in a single table.	This has been added as Table 2-4 (p. 2-10).							
4	4	4	Part VI.C.5.a.ii.(i)(ii)(iii)(iv) (Source Assessment)	The MS4 Permit requires a map of the MS4 including major outfalls and major structural controls...Section VII.A of Attachment C to the MS4 Permit requires maps of the drainage areas associated with the outfalls and these were not provided.	This has been addressed in part as Figure 3-16 (Locations of Existing Structural BMPs; p. 3-48)							
5	5	5	Part VI.C.5.a.iv (Watershed Control Measures)	...the program needs to more clearly demonstrate that the compliance schedules (Section 5) ensure compliance is "as soon as possible." The WMP needs to provide a clear schedule that demonstrates implementation of the BMPs will achieve the required interim metal reductions by the compliance deadlines. The WMP schedule should at the least provide specificity on actions within the current and next permit terms. ...it would be reasonable to update the WMP to contain project milestones and implementation timelines for projects that will be implemented under this grant.	This passage has interpreted the Board's requirement for ASAP compliance in strictly financial terms, with additional indeterminate delays added for acquisition and "conversion." In response to the requirement for "a clear schedule," a new paragraph has been added on page 5-2: "Uncertainties associated with the targeted nonstructural controls complicate establishment of specific implementation dates...the status of these controls will be included in the annual watershed reports as well as through the adaptive management process in order to assess their progress in attaining targeted load reductions. Table 5-1 lists the nonstructural TCM compliance schedule." This response makes clear that no commitments to "specificity or actions" or associated timelines. For example, of the 5 actions on Table 5-1 of the Draft WMP showing a 2014 start date, two are now listed in the Revised WMP as having July 2015 start dates. I also find no cross-walk between scheduled completion dates and interim compliance deadlines, as requested by the Board's comment.	Revise Table 5-1 of the revised draft WMP to include the milestones and milestone completion dates for the following targeted control measures (TCMs) as follows: a. TCM-PLD-2 (LID Ordinance): Remove the phrase "when practicable" and set a milestone date for ordinance adoption to 12/28/17 (i.e., end of permit term). b. TCM-TSS-1 (Exposed Soil Ordinance): Remove the phrase "if practicable" from the milestone description. c. TCM-TSS-3 (Private Lot Sweeping Ordinance): Remove the phrase "when practicable" from the milestone description. d. TCM-RET-1 (Encourage downspout disconnects): Identify interim milestones and dates for milestone achievement and include in table.	All requested wording changes were made for the final WMP; however, none of the substantive requirements of the October 30, 2014 Board comments have been met.					The comment was previously raised and addressed in Attachment 1, Staff Response to Petitioners' Detailed Technical Comments on page 11 [see RB-AR18240]. Quoting in part from the previous responses, "[t]he Revised WMP provided more specificity in Section 5 regarding structural and non-structural BMPs. Regarding structural BMPs, the Revised WMP includes a pollutant reduction plan in Section 5.4 (pg. 5-7) that indicates the BMP volume that each Permittee needs to install within its jurisdiction at 10%, 35%, and Final milestones dates (these milestones occur in 2017, 2020, and 2026, respectively) and also identifies regional projects that could support achieving the 10% and 35% milestones..." The previous response also states on page 14 [see RB-AR18243], "The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. The revised WMP provides an estimate of the cost of structural BMPs and based on this estimated cost, re-releases the financial difficulties and uncertainties of implementing the WMP...and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding..." This additional clarification is a sufficient response to the comment..."
6	6	6	Part VI.C.5.b.iv.(5)(c) (Selection of Watershed Control Measures)	For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible...it does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.	The only changes to the Executive Summary of the RAA (Section 4.1) states that the RAA "determined that the metal zinc will be the primary or limiting pollutant and that by implementing structural and non-structural measures...to reduce zinc, the remaining pollutant goals will be achieved...The rationale...is included Section 5.3.1 of the RAA (Appendix 4-1)" (see # 11 below). However, the request was for determining if "compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame" (emphasis added). This comment has not been addressed.	No additional requirement to address October 30, 2014 Board comment.	No change.	"The introduction to Section 5 was modified to more clearly demonstrate that the compliance schedule is as soon as possible for pollutants not addressed by TMDLs."	The referenced modification in the Revised (and Final) WMP reads as follows: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible." This is not an analysis of non-TMDL pollutants but rather a discussion of how an absence of committed funding can impose indefinite delay on water-quality improvements. The problem may be genuine but the WMP remains non-responsive and offers no guidance on how to proceed.	"The revised WMP provides an estimate of the cost of structural BMPs and based on this estimated cost, re-releases the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP...The Group's existing strategy to control pollutants "as soon as possible" is sound" (emphasis added)	No "strategy" is evident in the response.	Given that the Group continues to seek funding for the projects needed for its current compliance schedule, which deals with the highest priority TMDL pollutants, it is reasonable to conclude that the Group cannot commit to (and substantiate) additional expected compliance schedules for certain non-TMDL pollutants. The Group themselves note in the revised Watershed Management Program the "aggressiveness" of the compliance schedule that they have already proposed. Evaluating the Group's response in conjunction with what the Group has already committed to and what other Groups have committed to, Staff did not find that there was reason to require further expected compliance schedules from the Group for non-TMDL pollutants.
7	7	7	Part VI.C.5.b.iv.(ii)(iii)(iv) (Minimum Control Measures- Industrial/Commercial Facilities Program)	The revised WMP should ensure that any alternative prioritization method used by a City must also be based on water quality impact...The Group should revise their draft WMP to clearly state when the initial prioritization of facilities will occur. Additionally, the Group should be explicitly clear that during any reprioritization, the ratio of low priority to high priority facilities must always remain at 3:1 or lower to maintain inspection frequencies identified in the draft WMP.	These changes have been made							
8	8	8	Part VI.C.5.b.iv.(4)(b)-(d) (Watershed Control Measures)	The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.	Both the Draft and Revised WMP have the following text (without changes between versions): "Specific green street projects were not investigated or not in initial analysis for potential BMPs; therefore, the City-specific summary lists potential regional LID BMPs that could be used to achieve the required interim milestones and targets. Since the WMP is a planning-level document, over time the Watershed Group will report and demonstrate that the summative effect of projects implemented add up to the required reductions for interim milestones and final targets" (emphasis in original) Since this wording elicited the initial Board comment on the Draft WMP, its persistence in the Revised WMP is non-responsive. Section 5 was revised and now states: "Uncertainties associated with the targeted nonstructural controls complicate establishment of specific implementation dates. Despite this uncertainty, the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions. In addition, the status of these controls will be included in the annual watershed reports as well as through the adaptive management process in order to assess their progress in attaining targeted load reductions." (p. 5-2) Thus, no commitments has been made beyond good intentions and a (mandated) willingness to track progress (or lack thereof) through the permit cycle.	No additional requirement to address October 30, 2014 Board comment.	No change.	"The commitment language was included in the Revised (and Final) WMP in Section 5.3. Also included were modifications to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. Of particular note, WMP Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects to address the milestones in the compliance tables of the RAA, Attachment B."	The one change in this section that includes new dates specifies, for regional BMPs only, that "preliminary site assessments and feasibility study will be completed by March 2016. Field analysis at selected sites will begin in December 2016." The text goes on to state, "Even though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to conducting the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules. Through implementation of the WMP and adaptive management, there is the potential for the final compliance milestones to change." This final caveat raises some concern over the nature of "any such commitment."	"The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5). The Group has conveyed to Board staff that the information contained in Section 5 is the maximum practicable given uncertainties and that greater certainty will be provided through the adaptive management process."	Given the minimally defined state of the "Adaptive Management Process" (Section 9), greater future certainty is not guaranteed.	This comment is addressed in the main response document, and in Attachment 1, Staff Response to Petitioners' Detailed Technical Comments on page 1 [see RB-AR18230 to RB-AR18321]. To reiterate, "[t]he Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5)." See also response directly above.
9	9	9	Part VI.C.5.b.iv.(4)(c) (Watershed Control Measures- Milestones)	The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity...is needed...there should at least be more specificity on actions within the current and next permit terms to ensure that the following interim requirements are met (1) a 10% reduction in metals loads during wet weather and a 30% reduction in dry weather by 2017 and (2) a 35% reduction in metals loads during wet weather and a 70% reduction during dry weather by 2020.	These requirements were already articulated in Table 2-4 of the 2014 RAA. There are no apparent wording changes between the Draft and Revised of the WMP that directly address this comment, which presumably reflected a shortening in the original document. Given the vague nature of nearly all of the nonstructural "milestones" and provisional nature of virtually all of the BMPs, it's not surprising that there is no direct linkage between committed actions and achieving interim requirements by specified dates. Quite possibly, there are insufficient projects in the pipeline, or credibly on-schedule for implementation at the present time to achieve even the 2017 targets.	No additional requirement to address October 30, 2014 Board comment.	No change.	"Section 5 of the Revised (and Final) WMP was modified to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. The corrections to the Final WMP further refined these commitments. The Group has also addressed the inherent uncertainty as to which specific BMPs will be implemented to address the milestones in the RAA compliance tables (RAA Attachment B). Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects."	"The Revised WMP provided more specificity in Section 5 regarding structural and non-structural best management practices (BMPs). The Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the projects. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs...The Final WMP addresses this condition by including additional milestones and dates for their achievement."	The inclusion of a specific month and day to the year of implementation is not a substantive change and there is no indication that implementation of the LID BMP projects listed in Table 5-2 will achieve the required interim reductions noted in the original comment. Most of the requirements from the original Board comment have not been met.	This comment is addressed in the main response document, and in Attachment 1, Staff Response to Petitioners' Detailed Technical Comments on page 1 [see RB-AR18230 to RB-AR18321]. To reiterate, "[t]he Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5)." See also response directly above.	
10	10	10	Part VI.C.5.b.iv.(4)(c) (SB 346 Copper Reductions)	The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions...Other structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs.	No change was made in the document in response to the comment.	No additional requirement to address October 30, 2014 Board comment.	No change.	"A change to the document was not necessary as explained in a response table to the RB. The RAA approach of controlling zinc, in concert with the modeled effect of copper load reductions anticipated through SB 346, anticipates that the application of the Watershed Control Measures and Compliance Schedule of Chapter 3 and 5, respectively, will reduce copper loads sufficiently to achieve compliance deadlines from interim and/or final WQBELs."	"The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment"	This response suggests that the Board's original judgment ("The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions") was simply incorrect. If that is the present conclusion of the staff it should be clearly articulated as such.	The Petitioners only cite the first paragraph of the Staff Response to Petitioners' Detailed Comments in its Memorandum of Points and Authorities and Exhibit D on page 13 [see RB-AR18242]. The second paragraph of this response addresses this comment. The WMP Group has explained its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on the draft WMP."	

9	12	11	Part VI.C.5.b.iv.(5) (Reasonable Assurance Analysis - Limiting Pollutants)	<p>A microscopic change in wording has been made on p. 4-1 between the Draft and the Revised WMP.</p> <p>DRAFT: "The RAA has determined that the metal zinc will be the primary or "limiting" pollutant and that by implementing structural and non-structural measures to reduce zinc, the remaining pollutant goals will be achieved."</p> <p>REVISED: "The RAA has determined that the metal zinc will be the primary or "limiting" pollutant and that by implementing the structural and non-structural measures in Chapter 3 to reduce zinc, the remaining pollutant goals will be achieved for the Water Quality Priorities defined in Chapter 2. The rationale for this modeling approach is included Section 5.3.1 (a)(i) of the RAA (Appendix 4-1)." (Note the identical typo is present in the Lower Los Angeles River Revised WMP.)</p> <p>The request for explicit explanations for each pollutant has not been followed.</p> <p>If the Group believes that this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>"Section 5.3.1 of the RAA justifies how Category 1, 2, and 3 pollutants are controlled through the limiting pollutant approach. This statement, along with a reference to the RAA for justification, is included in Section 4.1. The revised introduction to Section 5 provides explicit statements regarding the implementation of this approach in order to achieve applicable receiving water limitations."</p> <p>The revised text of Section 5 states "This is true for all WQPs—by the nature of the limiting pollutant approach, it is expected that each of the remaining WQPs will be controlled at a faster rate than zinc." As such it is a definition of a limiting pollutant approach but nothing more.</p>	<p>"The Group has added additional clarification on its limiting pollutant approach in Section 5 (pg. 5-1) of the WMP and in Section 5.3.1 of the RAA (Appendix A-4-1, pg. 38). The revised WMP does not state and justify this approach for each category 1, 2, and 3 pollutant; however, this is not necessary given the Group's limiting pollutant approach."</p>	<p>Section 5.3 of the RAA notes "Overall findings of the study estimated that of the anthropogenic sources of copper, approximately 35 percent are attributed to brake pad releases (BPP 2010). Even if the reduction was only half of this amount, the adjustment to the required copper reduction would still result in zinc being the limiting pollutant for LLAR, LOC, and LSGR." Setting aside whether "only half" is a reasonable expectation for copper reductions from SB 346, it suggests that other pollutants might have similarly significant required reductions relative to zinc, but because they were not modeled this cannot be assumed. Simply asserting that zinc is limiting based on only a few constituents (and then redefining the term) does not constitute proof.</p>	<p>The use of a subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants.</p>	
8	12	12	Part VI.C.5.b.iv.(5) (Reasonable Assurance Analysis - New Non-Structural Controls)	<p>"The draft assumes a 10% pollutant reduction from non-structural controls...additional support for this assumption should be provided, particularly since the group appears to be relying almost entirely on these controls for near-term pollutant reductions to achieve early interim milestones/deadlines...The Permittees should commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p>	<p>The following passage was added to Section 4.3: "Currently there is insufficient information to accurately model the implementation of the controls listed in Section 3.2.3 through 3.4.1. These non-modeled controls were instead assigned a modest fraction of 10% for their cumulative load reduction. As part of the adaptive management process the Participating Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported. However, despite the uncertainty surrounding the specific load reductions for these controls, there is support to suggest that the assumption is in fact a modest one." (p. 4-2 and 4-3)</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>"Section 4.3 was added to the Revised WMP to address the Regional Board comment. The Regional Board also states that, "as part of the adaptive management process, the Permittees should commit to evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." This comment was also included in the in Section 4.3."</p>	<p>"Section 4.3 also clarifies the support for the 10% pollutant reduction and commits to a reevaluation of the assumption: "Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p>	<p>The use of a subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants.</p>	
9	13	13	Part VI.C.5.b.iv.(5) (Reasonable Assurance Analysis - Irrigation Reductions)	<p>For dry weather, the WMP assumes a 25% reduction in irrigation (RAA, section 7.1.2). Additional support should be provided for this assumption, particularly since the group appears to be relying almost entirely on this non-structural BMP for near-term pollutant reductions to meet early interim milestones/deadlines...The Permittees need to commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported.</p>	<p>A new section (4.2.1) was added to the 2015 WMP that summarized the results of 4 studies (1997, 1998, 2004, 2010) on reductions in residential water use, which suggest that 25% reduction is a plausible outcome. The referenced RAA section is only 1 page and was not changed between the 2014 and 2015 versions.</p> <p>The justification for 25% reductions is plausible, as current response to emergency drought measures have recently demonstrated, but it is hardly "conservative" (as stated in the text); it also presupposes implementation of actions that would lead to such an outcome. By using emergency drought regulations as an example of how public education can reduce water use, it begs the question of their applicability to sustainable, long-term reductions.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>Regional Board staff responded to this issue in page 26 of its Assessment of NRDC/LAW/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP): "The Group supports the 25% by citing studies that report water reductions from installation of conservation programs. They also commit to reevaluate this assumption. This adequately addressed Board staff's comment." (see RB-AR18262)</p>		
9	14	14	Part VI.C.5.b.iv.(5) (Reasonable Assurance Analysis - Regional BMPs)	<p>Section 14.2 of Attachment A to the RAA points out that additional potential regional BMPs were identified to provide the remaining BMP volume noted in Table 9-4. The RAA should clarify that sufficient sites were identified so that the remaining necessary BMP volume can be achieved by those sites that were not "excluded for privacy."</p>	<p>No change was made in the document in response to the comment.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>The Group has indicated to Board staff that the complete list of potential sites -- including the sites that were "excluded for privacy" -- provide the necessary BMP volume, and that the "excluded for privacy" sites should be considered since they are still potential regional BMPs sites within the watershed.</p> <p>Furthermore, the original comment directed the Group to "clarify." It did not "require demonstration." The Group does not make the statement that non-excluded sites are sufficient, and makes it clear that their approach relies on both excluded and non-excluded sites. The Group has committed to volume reduction milestones that must be achieved for WMP compliance.</p>		
15	9	15	Part VI.C.5.b.iv.(5) (Reasonable Assurance Analysis - Permitted Industrial Facilities)	<p>...it is important that the Group's actions under its Industrial/Commercial Facilities Program, including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities-ensure that all industrial facilities are implementing BMPs as required.</p>	<p>A substantial amount of new information was added to the RAA, although the organization (e.g., multiple "Attachment A" documents) make a clear understanding of their interrelationships difficult. A new "Attachment E: Minimum Control Measure Guidance" includes 10 pages on implementing an Industrial/Commercial Facilities Program, although the document explicitly "provides guidance" rather than stating a requirement of the WMP.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>No change.</p>		
16		16	Part VI.C.5.b.iv.(5)(a) (Watershed Control Measures, page 63)	<p>In Section 3.4.1.1 the draft WMP states, "As recognized by the footnote in Attachment K-4 of the Permit, the Participating Agencies have entered into an Amended Consent Decree with the United States and the State of California, including the Regional Board, pursuant to which the Regional Board has released the Participating Agencies from responsibility for toxic pollutants in the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors."</p> <p>This statement misinterprets the Regional Water Board's findings, the statement in the draft WMP incorrectly concludes that the aforementioned Consent Decree releases MS4 Permittees from any obligation to implement the WQBELs in the MS4 permits.</p>	<p>The 2015 text has been modified and now reads "The footnote specifically states: "The requirements of this Order to implement the obligations of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL do not apply to a Permittee to the extent that it is determined that the Permittee has been released from that obligation pursuant to the Amended Consent Decree entered in United States v. Montrose Chemical Corp., Case No. 90-3122 AAH (JR4)." The submission of this WMP and its associated CIMP and any action or implementation taken pursuant to it shall not constitute a waiver of any such release of obligations established by that Amended Consent Decree." (p. 3-22)</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>No change.</p>		
17		17	Part VI.C.5.c (Compliance Schedules)	<p>Page 6-1 notes that "the final non-TMDL water quality standard compliance date is projected to be sometime in 2040." However, the pollutant reduction plan milestones in Section 5 only appear to go up to the year 2026. For watershed priorities related to addressing exceedences for receiving water limitations, the permit requires milestones based on measurable criteria or indicators, a schedule with dates for achieving the milestones, and a final date for achieving the receiving water limitations as soon as possible. These need to be included in the revised WMP.</p>	<p>The offending phrase in Section 6.1 ("The final non-TMDL water quality standard compliance date is projected to be sometime in 2040") was simply deleted in the Revised WMP. The only mention of the year 2040 in the Revised WMP is in the added section 5.4.14 ("The State of California," for bacteria, the existing Los Angeles River Bacteria TMDL is applicable. This results in a final wet and dry weather deadline of 2040, which extends beyond the 2026 deadline for the limiting pollutant zinc. If it is determined through the adaptive management process (e.g., due to future model simulations) that required bacteria load reductions may not be met by controlling for zinc, then the WMP will be modified to incorporate bacteria milestones with measurable criteria or indicators with a final deadline of 2040.</p> <p>This is unlikely to be the type of response that the Board was seeking through this comment. There are no milestones, based on measurable criteria or indicators, an explicit schedule, nor a final date.</p>	<p>Revise the last sentence of Section 5.4.14 of the revised draft WMP to the following: "If it is determined through the adaptive management process that required bacteria load reductions may not be met by controlling for zinc, then the WMP will be modified to incorporate bacteria milestones with measurable criteria or indicators, a schedule with dates for achieving the milestones, and a final date for achieving the receiving water limitations as soon as possible." (Emphasis added)</p>	<p>Section 5.4.14 was modified as directed by the Conditional Approval requirements, but these changes are still not responsive to original comment with its explicit request for "milestones based on measurable criteria or indicators, a schedule with dates for achieving the milestones, and a final date for achieving the receiving water limitations as soon as possible." (Emphasis added)</p>	<p>The original comment primarily addressed an apparent 2040 compliance date, which did not have a concrete date or an associated schedule of milestones. This Final WMP clarifies that this 2040 date is a potential backup date for bacteria compliance if, through implementation of the control measures scheduled for the 2026 deadline, controls are found to be insufficient to meet bacteria load reductions. This discussion of a "backup date" acknowledges longer compliance schedules for bacteria within the region and has been made to be consistent with the Regional Board's 2015 Basin Plan Amendment, which approved a TMDL for Indicator Bacteria in the San Gabriel River, Estuary and Tributaries. This TMDL proposes a 10-year implementation period for dry-weather bacteria compliance and a 20-year implementation period for wet-weather bacteria compliance.</p>			
RAA EVALUATION LETTER											
18		18	(A.1. "General comments")	<p>The Revised WMP now states "As expressed in the tables of Section 5.4, the Participating Agencies can meet the September 30, 2017, 10% milestone without structural controls" (p. 5-6) However, the revised tables so referenced offer no "support" whatsoever for the 10% milestone, every one of them simply states "Nonstructural practices achieve 10% milestone". A bald assertion is not the same as providing additional support.</p> <p>Additional support for the anticipated pollutant load reductions from these non-structural BMPs and source control measures over the next two to three years should be provided to increase confidence that these measures can achieve the near-term interim WQBELs by September 2017.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>No change.</p>	<p>The Group added two additional subsections in section 4 of their WMP to provide additional support for the sufficiency of nonstructural controls to cumulatively meet the 10% load reduction milestone.</p> <p>Furthermore, the Group commits to a reevaluation of the assumption stating: "Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." (See RB-AR15679)</p> <p>Pages 24-25 of Staff's Assessment of NRDC/LAW/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (see RB-AR18260 to RB-AR18261) cites the information the Group provides to support its 10% assumption.</p> <ul style="list-style-type: none"> - Expanded nonstructural MCMs in the MS4 permit (particularly Development Construction Program) - Expanded non-stormwater discharge control measures in the MS4 permit - Nonstructural targeted control measures (e.g., ordinances, increased street sweeping, promotion of downspout retrofits, etc.) <p>To track this, the nonstructural targeted control measures that the Group has developed have a compliance schedule with associated milestones.</p> <p>However, due to the nature of these measures being contingent upon political will (e.g., ordinances), public involvement (e.g., downspout retrofits), and external forces (e.g., source control regulations on metals and grant-funded based projects), implementation of these measures carries with it a degree of uncertainty. Because of this, the Executive Officer's approval letter included a condition that the Group include, where appropriate, more definitive milestones for the nonstructural control measures listed in Table 5-1 and the structural control measures listed in Section 5.2. In the Final WMP, the Group revised milestones for the BMPs listed in Table 5-1 and included jurisdiction-specific milestones (with milestone dates from 2015 to 2017) for the construction and completion of the structural BMPs listed in Section 5.2. The Executive Officer determined that this adequately addressed the condition in the approval letter.</p>		
19		19	(A.2. "General comments")	<p>Section 5 Compliance Schedule of the draft Watershed Management Plan only provided implementation schedule for non-structural targeted control measures up to 2017. The LSGR Watershed Management Group must provide measurable milestones for implementing each one of the proposed control measures that will allow an assessment of progress toward the interim and final WQBELs and receiving water limitations every two years.</p>	<p>See #5 above: a new column ("Milestones") has been added to Table 5-1, Nonstructural TCM Compliance Schedule, and a new section was added to the Revised WMP "Approach to Implementing Structural Controls" in Section 5.3.2), with the following additions for schedule:</p> <ul style="list-style-type: none"> • For Right-of-Way BMPs: "Every two years the adaptive management process will include an assessment of the effectiveness of both 1) right-of-way BMPs incorporated into CIP projects and 2) the STP in contributing toward targeted load reductions." • For Regional BMPs: "The preliminary site assessments and feasibility study will be completed by March 2016. Field analysis at selected sites will begin in December 2016." <p>Near the end of this section, the following sentence has been added: "Even though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to constructing the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules."</p> <p>The "measurable milestones for implementing each one of the proposed control measures" requested by the Board comments have not been provided.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>This comment is addressed in the main response document. To reiterate, this contention was previously raised by Petitioners and addressed by the Los Angeles Water Board, particularly with respect to nonstructural BMPs, in Staff's Assessment of NRDC/LAW/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) -- Lower San Gabriel River Response 8 (pgs. 28-29) (see RB-AR18264 to RB-AR18265)</p> <p>In further response to this contention, Section 5.4 (pgs. 5-9 to 5-23) of the Lower San Gabriel River Watershed Management Program (see RB-AR1860 to RB-AR18704) lists the BMP volume capacities that each Permittee needs to install to comply with milestones in 2017, 2020, and 2026. These BMP capacities are taken directly from the WMP/Watershed Management Program's RAA.</p> <p>If a Permittee does not achieve these BMP volume capacities by a milestone date, they are not in compliance with their Watershed Management Program. Furthermore, these volumes allow for an assessment of progress toward interim and final WQBELs and receiving water limitations every two years."</p>		
20		20	(A.3. "General comments")	<p>A new passage in the Revised WMP (Section 5.4.14) states "A bacteria TMDL has not been adopted for the Lower SGR Watershed. The RAA Guidelines state that in such an instance targets and critical conditions from other TMDLs in the region should be utilized. For bacteria, the existing Los Angeles River Bacteria TMDL is applicable." No other bacteria-specific control measures appear to have been added to the 2015 WMP.</p> <p>Thus, this issue does not appear to have been addressed.</p> <p>The LSGR WMP should include a more specific strategy to implement pollutant controls necessary to address this (bacteria) and other Category 2 pollutants prior to the second and third adaptive management cycles.</p>	<p>No additional requirement to address October 30, 2014 Board comment.</p>	<p>No change.</p>	<p>No change.</p>	<p>The cited 2040 date for bacteria serves as a backup date if, through adaptive management and future model simulations, the 2026 deadline for zinc is inadequate to control bacteria. The 2040 date is based on schedules for other bacteria TMDLs.</p> <p>As an additional note, a SGR bacteria TMDL was recently adopted by the Board and the implementation schedule provides MS4 Permittees up to 20 years from the effective date of the TMDL to achieve the wet weather TMDL wastewater allocations. When the permit is reopened or renewed, and provisions consistent with the assumptions and requirements of the SGR bacteria TMDL are incorporated, the Group will be required to revise its WMP consistent with the implementation schedule of the TMDL.</p> <p>The Executive Officer's approval letter included a condition, directing the Group to clarify the bacteria compliance schedule with the language "It is determined through the adaptive management process that required bacteria load reductions may not be met by controlling for zinc; then the WMP will be modified to incorporate bacteria milestones with measurable criteria or indicators consistent with any future bacteria TMDL for the San Gabriel River and with, at the latest, a final deadline of 2040." The Final WMP included this language in Section 5.4.14 on page 5-23."</p>			

17	21	(B.1. "Modeling comments")	Based on the results of the hydrology calibration shown in Table 4-3, the error difference between modeled flow volumes and observed data is 10%. The higher error percentage could be due to the exclusion of contributions of flow volume from upstream. For calibration purposes, upstream volume should be included. Once model calibration has been completed, the upstream flow volume can then be excluded.	Between the Draft and Revised WMP's RAA, the % error improves from -19.0% to -3.31%. There is no text change to explain this difference, nor any apparent differences in the graphed monthly hydrographs for observed and modeled flows.	No additional requirement to address October 30, 2014 Board comment.	No change.	"It should be noted that the entire watershed was included in the model for calibration purposes, including areas upstream and outside of the area addressed by the RAA. As such, there was no absence of upstream flow contributing to the error difference. As stated in the Regional Board comment, once calibration was completed, upstream areas were subtracted from the model for presenting load reduction targets. The plots in Attachment E were updated to show the daily calibration results. The Tables in Section 4.1.1 and 4.1.2 were updated to show the modeled versus observed volume error for the daily calibration results (versus the monthly that were shown previously)." "The Group has clarified that upstream flows were taken into account in the RAA. Additionally, the Group has also clarified that the tables in Sections 4.1.1 and 4.1.2 have been updated to show the modeled versus observed volume error for the daily calibration results as opposed to the monthly calibration results used in the draft WMP."	It is unusual that calibration results improve when evaluated on shorter time steps, but the results are presumed correct. Note that nowhere in Section 4.1.1 is the time step specified.		
18	22	(B.2. "Modeling comments")	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	A new set of tables and maps (Section 5.3.1 of the RAA) has been added to the Revised WMP that is responsive to this comment. Only 7 pollutants are shown, however.	No additional requirement to address October 30, 2014 Board comment.	No change.	"An additional table was added to the RAA to reflect the baseline loads. Found on page 39 as Table 5-6."	"Table 5-6 of the RAA (Appendix A-4-1, pg. 40) reflects baseline loads for organics, metals, and bacteria. Although TSS is not included, the sediment associated pollutants are included (DOT, PCB, and PAHs)."		
22	19	23	(B.3. "Modeling comments")	"...the differences between baseline concentrations/loads and allowable concentrations/ loads should be presented in time series for each pollutant under long-term continuous simulation and as a summary of the differences between pollutant concentrations/loads and allowable concentrations/loads for the critical wet weather period."	In the Revised RAA, a new section has been added: "Attachment F: Modeled Existing Versus Allowable Pollutant Loadings Plots". As suggested by the title, it provides the requested time series of loads, but not concentrations. No summaries, just time-series graphs, are provided. This is a partial response to one part of the Board's request.	No additional requirement to address October 30, 2014 Board comment.	No change.		The time series plots of loads addresses the comment regarding time series plots. Text was also added to in Section 5.3.1 of the RAA to refer the reader to the attachment for the plots [see RB-AR16011]. Additionally, the input and output data provided by the Group includes concentration data [see RB-AR1931]. For the critical conditions, the Group adds Table 5-6 to show baseline loadings during the critical wet weather period to supplement Table 5-7, which summarizes and lists reduction targets for the critical conditions [see RB-AR16013].	
20	24	(B.4. "Modeling comments")	"We note that modeling was not conducted for organics (DOT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used...An explanation for the lack of modeling is needed."	New results in Section 5.3.1 of the Revised RAA suggest that modeling has occurred for these pollutants.			"It should be noted that the original watershed modeling (based on LSPC) supporting the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL, did not include simulation of DOT, PCBs, and PAHs. Rather, modeled sediment was used as a surrogate to estimate watershed loadings. Therefore, the 90th percentile of observed concentrations were assigned meeting requirements set forth by RAA guidance provided by the Regional Water Quality Control Board."	"The Group has clarified that the Harbor Toxics TMDL did not directly model these pollutants, but instead used sediment as a surrogate. To establish baseline pollutant loading, the Group uses the 90th percentile of observed concentrations for DOT, PCBs, and PAHs."		
21	25	(B.5. "Modeling comments")	The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 90th percentile, 24-hour volume retention standard for each major watershed area...The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in table 9-6 and 9-7 and how these values were derived from previous tables. The report needs to present the same information, if available, for non-stormwater runoff.	A single sentence was added to Section 9.2 in response to one item in this comment: "The incremental column shows the total additional BMP volume required for each milestone while the cumulative measures the total BMP volume required by each milestone to hit the final compliance targets." No other change was made in the document in response to the comment.	No additional requirement to address October 30, 2014 Board comment.	No change.	"Regarding the required information for the modeled subbasins, Attachment B of the RAA was updated to include the requested tables, along with a sentence to provide some clarification in RAA Section 9.2.1 (third paragraph). Regarding non-stormwater runoff, the complete comment from the Regional Board is as follows: "The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be recalibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area." A commitment to the recalibration alternative was included in WMP Section 4.2."	"Attachment B to the revised WMP includes detailed jurisdictional compliance tables that include runoff volumes, required volume reductions, and proposed volume reductions for each subwatershed. Language was added in section 9.2.1 of the RAA (Appendix, pg. 55) that clarifies the incremental and cumulative columns in Tables 9-4 through 9-7. Section 4.2 of the revised WMP commits to re-calibrate the RAA based on data collected through the monitoring program (which includes the non-stormwater outfall screening and monitoring program)."	This commitment is stated as follows: "The Reasonable Assurance Analysis for the Lower Los Angeles River Watershed is included in Appendix A-4-1. As data is collected through the monitoring program the model will be re-calibrated during the adaptive management process, which will allow for improved simulation of physical processes such as flow volumes and volume retention BMPs." Section 9 of the WMP, however ("Adaptive Management Process"), however, provides no clear assurances that such recalibration will occur. This "commitment" should be strengthened and made explicit.	Section VI.C.8 (pg. 69) of the LA County MS4 Permit (as amended by Order WQ 2015-0075) sets June 30, 2021 as the latest date at which an updated RAA must be submitted to the Regional Water Board [see RB-AR713]. "At the very least the Group must submit revised WMP with an updated RAA by June 30, 2021, or sooner as directed by the Regional Water Board Executive Officer or as deemed necessary by Permittees through the Adaptive Management Process, for review and approval by the Regional Water Board Executive Officer."
22	26	(B.6. "Modeling comments")	The report needs to present the same information [see above, comment B5], if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area, through the non-stormwater outfall screening and monitoring program, so that the model can be recalibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area.	No change was made in the document in response to the comment.	No additional requirement to address October 30, 2014 Board comment.	No change.			This issue is addressed on pages 28-30 of the Assessment of NRDCLAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Program (WMP) [see RB-AR18285 to RB-AR18286]. "The revised WMP does not include the same information for non-stormwater runoff; however, it includes additional information to support the assumptions used in its dry weather analysis: - 10% nonstructural BMP assumption in Section 4.3 - 25% irrigation reduction assumption in Section 4.2.1 In Section 4 of the WMP, the Group commits to re-calibrate its modeling as data is collected through its monitoring program (which includes the non-stormwater outfall screening and monitoring program). As explained in Section 7.1.2 of the RAA (Appendix A-4-1, pg. 51), for non-stormwater flows, the Group assumes a 10% load reduction from nonstructural BMPs and a 25% reduction in irrigation, which leads to another modeled load reduction. The remaining load reduction required for dry weather is assumed to be addressed by structural BMPs. Since the Group is committed to recalibrate modeling with new monitoring data and evaluate the above assumptions, the revised WMP adequately addressed Board staff's comment."	
CONDITIONAL APPROVAL LETTER										
27					Revise Table 5-1 of the revised draft WMP to state that for control measures listed as being a "jurisdictional effort," the Permittees that are responsible for milestone completion are identified in Table 3-5.	Equivalent text was already present in Section 5.1.3.				
25	28				Revise Section 5.2 of the revised draft WMP to include a table that lists definitive interim and final milestone achievement dates and the responsible Permittees for the Proposition 84 projects. Currently, the revised draft WMP only provides "expected" dates for construction and completion. The responsible Permittees within the LSGR WMG will be responsible for meeting these milestone achievement dates.	Done.				
28	29				In Section 4.3 of the revised draft WMP, include references to Table 3-2, Table 3-5, and any other relevant tables that list BMPs contributing to the 10% pollutant reduction assumption for non-modeled BMPs.	One sentence has been added: "The nonstructural measures are summarized in Tables 3-2 and 3-5."				
29	30				Provide further detail and specificity in Section 3.4.1.3 of the revised draft WMP on what incentives are being included in TCM-NSWD-1 and whether any incentives are being offered apart from Metropolitan Water District's rebate program.	Done.				
30	31				The City of Long Beach submitted its Statement of Legal Authority to the Los Angeles Water Board on February 26, 2015. Include this Statement of Legal Authority in the WMP appendix section containing the other Permittees' legal authority statements.	Done.				

Lower Los Angeles River

LAR URJ	Index LSGR	INDEX LLAR	Permit Citation	Board Comments from October 28, 2014	Analysis of Revised WMP (January 28, 2015) in response to Board Comments	Conditional Approval Requirements (April 28, 2015)	Analysis of Final WMP (June 12, 2015)	In LLAR Response Letter #2	Analysis of Response Letter statements	Staff Response (August 2015)	Analysis of Staff Response	Staff Response (January 2016)	
	1	1	Part VI.C.1.d (Purpose of Watershed Management Program)	Section 1.1 of the draft WMP states, "the goal of these requirements is to reduce the discharge of pollutants from MS4s to the maximum extent practicable." The goal of the three permits and of a WMP is broader than presented (p. 1-1). For the LA County MS4 Permit...The programs shall also ensure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1." The revised WMP needs to acknowledge the broader goals set forth in the permit.	Section 1.1 now paraphrases the above-stated goals of the Regional Board, and as in the Draft WMP further notes that "The ultimate goals of the WMP are listed in Section 1.2.3." However, no mention in either draft of the WMP includes the last concern of the Board, that "controls are implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP) pursuant to Part IV.A.1."	No additional requirement to address October 28, 2014 Board comment.	No change.					Both Section 1.1 [see RB-AR12238] and Section 1.2.4 [see RB-AR12244] of the Final WMP clearly state: "[E]nsure that controls are implemented to reduce the discharge of pollutants to the maximum extent practicable." Additionally, Section 1.2.4 includes a footnote that references Part IV.A.1 of the Permit. The Petitioners misconstrued Board staff's October 2014 comment, which was focused on ensuring that the WMP stated the water quality goals of the permit and WMPs, not just the "technology based" goal of reducing the discharge of pollutants to the maximum extent practicable. The Final WMP states in Sections 1.2.3-1.2.4 [see RB-AR12243 to RB-AR12244] the water quality goals of the permit and WMPs.	
		2	Part VI.C.5.a.iii.(f)(a)(v) (Source Assessment, page 60)	The MS4 Permit requires that TMDL source investigations be considered in the source assessment. Although several TMDLs are discussed in Section 2.2, others with potentially useful insights such as the Los Angeles River metals TMDL were not. The group should consider the source investigations from all relevant TMDLs for possible insights into important sources that might be useful in designing an effective program.	There are no apparent changes to Section 2.2.	No additional requirement to address October 28, 2014 Board comment.	No change.					The relevant section is Section 2.3, not Section 2.2. The Group has revised Section 2.3 to cite and incorporate information from TMDL source investigations in response to the original comment. [See RB-AR12253 to RB-AR12301]	
		3	Part VI.C.5.a.iii.(f)(a)(v) (Source Assessment, page 60)	The MS4 Permit requires the source assessment to include data and conclusions from watershed model results. The Regional Water Board did not find any responsive information in the draft WMP and any available information should be noted in the final WMP. For example, relevant findings presented in the implementation plans for the LA River metals TMDL, submitted in October 2010 by Reach 1 and Compton Creek participating jurisdictions and Reach 2 participating jurisdictions should be included.	Section 2.3 Source Assessment was significant expanded.								
		4	Part VI.C.5.a.iii.(f)(a)(vii) (Source Assessment)	The MS4 Permit requires a map of the MS4 including major outfalls and major structural controls...Section VII.A of Attachment E to the MS4 Permit requires maps of the drainage areas associated with the outfalls and these were not provided.	This has been addressed in part as Figure 3-16 (Locations of Existing Structural BMPs; p. 3-56).								
		5	Part VI.C.5.a.iv.(1) (Prioritization, page 60)	The MS4 Permit requires a strategy to implement pollutant controls necessary to achieve WQBELs and/or receiving water limitations (RWLs) with compliance deadlines that have already passed and limitations have not been achieved. The LA River metals TMDL includes interim wet and dry water quality-based effluent limitations with a compliance deadline of January 2012; the WMP needs to address the compliance status of the Permittees with these limitations, and ensure compliance. ...Therefore, the statement in the draft WMP incorrectly concludes that the aforementioned Consent Decree releases MS4 Permittees from any obligation to implement the WQBELs in the MS4 permits.	Citing a 2010 CDM report, section 3.4.1.3 now asserts "Specifically, the Reach 2 Implementation Plan indicates that the 2012 dry weather targets are currently being met and analyses of the Reach 2 watershed (which includes the Rio Hondo Spreading Grounds) indicates that the 2012 wet weather target is currently being met. With recent existing Reach 1 Regional Projects and the continued implementation of SUSMP/LID projects and nonstructural controls, the Group considers that the 2012 targets for Reach 1 have also been met." The assertion of release from obligations has been corrected in the Revised WMP.								
		6	Part VI.C.5.a.iv.(2)(a) (Prioritization, page 60)	Where data indicate impairment or exceedances of RWLs and the findings from the source assessment implicate discharges from the MS4, the Permit requires a strategy for controlling pollutants that is sufficient to achieve compliance as soon as possible. Although Section 3 includes a compliance strategy, the program needs to more clearly demonstrate that the compliance schedule (Section 5) ensures compliance is "as soon as possible."	Text has been added to p. 5-1: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls...As such the Group considers the compliance schedule to be as short as possible..." "the aggressive schedule in place to target zinc provides an equally aggressive schedule to target the remaining WQPs, and as such it is considered to be as short as possible for all WQPs." This passage has interpreted the Board's requirement for ASAP compliance in strictly financial terms, with additional indeterminate delays added for acquisition and "conversion." There is no effort to show that compliance will occur "as soon as possible," only an assertion that it is considered to be so.	Revise Table 5-1 of the revised draft WMP to state that for control measures listed as being a "jurisdictional effort," the Permittees that are responsible for completion of each milestone are identified in Table 3-11. Revise Table 5-1 of the revised draft WMP to include the milestones and milestone completion dates for the following targeted control measures (TCMs) as follows: a. TCM-PLD-2 (LID Ordinance): Remove the phrase "when practicable" and set a milestone date for ordinance adoption to 12/28/17 (i.e., end of permit term). b. TCM-TSS-1 (Exposed Soil Ordinance): Remove the phrase "if practicable" from the milestone description. c. TCM-TSS-3 (Private Lot Sweeping Ordinance): Remove the phrase "when practicable" from the milestone description. d. TCM-RET-1 (Encourage downspout disconnects): Identify interim milestone(s) and date(s) for milestone achievement and include in table.	All requested wording changes were made for the Final WMP; however, none of the substantive requirements of the October 28, 2014 Board comments have been met.					This contention was previously addressed in Staff's Assessment of NRDCLAWKNTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) - Lower Los Angeles River Response 3 (pgs. 14-15) [see RB-AR18270 to RB-AR18271]. The revised WMP (pg. 5-1) includes new language that clarifies the Group's strategy: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures." The revised WMP provides an estimate of the cost of structural BMPs, and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP... and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding... This additional clarification is a sufficient response to the comment."	
		7	Part VI.C.5.b.iv.(S)(c) (Selection of Watershed Control Measures)	For waterbody-pollutant combinations not addressed by TMDLs, the MS4 Permit requires that the plan demonstrate using the reasonable assurance analysis (RAA) that the activities and control measures to be implemented will achieve applicable receiving water limitations as soon as possible...it does not address the question of whether compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame.	The only changes to the Executive Summary of the RAA (Section 4.1) states that the RAA "determined that the metal zinc will be the primary or limiting pollutant and that by implementing the structural and non-structural measures... to reduce zinc, the remaining pollutant goals will be achieved...The rationale... is included Section 5.3.1 of the RAA (Appendix 4-1)" (see # 12 below). However, the request was for determining if "compliance with limitations for pollutants not addressed by TMDLs could be achieved in a shorter time frame" [emphasis added]. This comment has not been addressed.	No additional requirement to address October 28, 2014 Board comment.	No change.	"The introduction to Section 5 was modified to more clearly demonstrate that the compliance schedule is as soon as possible for pollutants not addressed by TMDLs."	The referenced modification in the Revised (and Final) WMP reads as follows: "Meeting the load reductions determined by the RAA results in an aggressive compliance schedule in terms of the technological, operational, and economic factors that affect the design, development, and implementation of the necessary control measures. Notably, as described in Chapter 6, there is currently no funding source to pay for these controls. Assuming finances are available, conversion of available land into a regional BMP is a protracted process that can take several years (not accounting acquisition, when required). As such the Group considers the compliance schedule to be as short as possible." This is not an analysis of non-TMDL pollutants but rather a discussion of how an absence of committed funding can impose indefinite delay on water-quality improvements. The problem may be genuine but the WMP remains non-responsive and offers no guidance on how to proceed.	"The revised WMP provides an estimate of the cost of structural BMPs and based on this estimated cost, reiterates the financial difficulties and uncertainties of implementing the WMP (particularly the lack of funding sources for controls), and concludes that the compliance schedule is as short as possible to allow time to both address technological and operational challenges and to secure the necessary funding to implement the watershed control measures in the WMP...The Group's existing strategy to control pollutants "as soon as possible" is sound." [emphasis added]	No "strategy" is evident in the response.	This comment was previously raised and addressed, and is also further addressed in the main response document. To reiterate, the Lower Los Angeles River Watershed Management Program Group commits to a compliance schedule with a final compliance date of 2028 that is based on its RAA. This RAA uses a "limiting pollutant" strategy that is meant to address applicable TMDL compliance schedules as well as all pollutants, including pollutants with RWLs that are not addressed by TMDLs. This RAA, and the resulting compliance schedule, are not based on financial terms. Given that the Group continues to seek funding for the projects needed for its current compliance schedule, which deals with the highest priority TMDL pollutants, it is reasonable to conclude that the Group cannot commit to (and substantiate) additional expedited compliance schedules for certain non-TMDL pollutants. The Group themselves note in the revised Watershed Management Program the "aggressiveness" of the compliance schedule that they have already proposed. Evaluating the Group's response in conjunction with what the Group has already committed to and what other Groups have committed to, Staff did not find that there was reason to require further expedited compliance schedules from the Group for non-TMDL pollutants.	
13		9		The MS4 Permit requires that the WMP provide specificity with regard to structural and non-structural BMPs, including the number, type, and location(s), etc. adequate to assess compliance. In a number of cases, additional specificity on the number, type and general location(s) of watershed control measures as well as the timing of implementation for each is needed. (Regional Water Board staff notes, for example, that many watershed control measures in the implementation schedule only reference the year (or years) that a measure or milestone will be implemented. This should be revised to include more specific and/or exact dates where appropriate.) [Note this condition requires less specificity than the analogous condition for LSGR.]	Section 5.3 now includes the introductory disclaimer, "Uncertainties associated with the structural controls complicate establishment of specific implementation dates. Despite this uncertainty the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions." Within each city's Pollutant Reduction Plan (Section 5.4), specific dates have been added to each year.			"Section 5 of the Revised (and Final) WMP was modified to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. The corrections to the Final WMP further refined these commitments. The Group has also addressed the inherent uncertainty as to which specific BMPs will be implemented to address the milestones in the RAA compliance tables (RAA Attachment B); Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects."	"The Revised WMP provided more specificity in Section 5 regarding structural and non-structural best management practices (BMPs)...the Revised WMP did not contain definitive milestone dates, nor did it specify the Permittees responsible for the projects. The Executive Officer's approval letter included a condition that the Group add definitive dates for these LID BMPs...The Final WMP addresses this condition by including additional milestones and dates for their achievement."				
				Additionally, many watershed control measures in the implementation schedule are ongoing measures that are not new interim milestones (e.g. MCMs, implementation of SB 346, enhanced street sweeping, etc.). For transparency, Regional Water Board staff recommends that ongoing measures clearly be separated from interim milestones for structural controls and non-structural BMPs in the implementation schedule.	Table 5-1 (Nonstructural TCM Compliance Schedule) has simply added the "ongoing" projects to the bottom of the prior list of planned projects, and added the label "Ongoing" in the column for Start date.								

Lower Los Angeles River

8	8	Part VI.C.5.b.iv.(4)(d) (Watershed Control Measures - Milestones)	<p>The RAA identifies potential areas for green street conversion and assumes a 30% conversion of the road length in the suitable areas; however, the specific locations and projects are not identified. Although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules.</p>	<p>Both the Draft and Revised WMP have the following text (without changes between versions): "Specific green streets projects were not investigated during this initial analysis for potential BMPs, therefore, the City-specific summary lists potential regional LID BMPs that could be used to achieve the required interim milestones and targets. Since this WMP is a planning-level document, over time the Watershed Group will report and demonstrate that the summative effect of projects implemented add up to the required reductions for interim milestones and final targets." (emphasis in original)</p> <p>Section 5 was revised and now states: "Uncertainties associated with the targeted nonstructural controls complicate establishment of specific implementation dates. Despite this uncertainty, the Group has made a diligent effort to provide a clear schedule of specific actions within the current and next permit terms in order to achieve target load reductions. In addition, the status of these controls will be included in the annual watershed reports as well as through the adaptive management process in order to assess their progress in attaining targeted load reductions." (p. 5-2)</p> <p>Thus, no commitments have been made beyond good intentions and a (mandated) willingness to track progress (or its lack thereof) through the permit cycle.</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.	<p>"The commitment language was included in the Revised (and Final) WMP in Section 5.3. Also included were modifications to increase the degree of clarity and specificity regarding schedules and actions for the current and next permit terms. Of particular note, WMP Section 5.3 was revised to include a 2015-2016 schedule of feasibility studies and site assessments to determine specific projects to address the milestones in the compliance tables of the RAA, Attachment B."</p>	<p>The one change in this section that includes new dates specifies, for regional BMPs only, that "preliminary site assessments and feasibility study will be completed by March 2016. Field analysis at selected sites will begin in December 2016." The text goes on to state, "Even though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to constructing the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules. Through implementation of the WMP and adaptive management there is the potential for the final compliance milestones to change." This final caveat raises some concern over the nature of "any such commitment."</p>	<p>"The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5). The Group has conveyed to Board staff that the information contained in Section 5 is the maximum practicable given uncertainties and that greater certainty will be provided through the adaptive management process."</p>	<p>Given the minimally defined state of the "Adaptive Management Process" (Section 9), greater future certainty is not guaranteed.</p>	<p>This comment is addressed in the main response document. To reiterate, this contention was previously raised by Petitioners and addressed by the Los Angeles Water Board in Staff's Assessment of NRDC/LAW/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) - Lower Los Angeles River Response 6 (pgs. 15-16) [see RB-AR18271 to RB-AR18272].</p> <p>Furthermore, the Lower Los Angeles River Group states in their revised Watershed Management Program (page 5-6) [see RB-AR11417]:</p> <p>"Even though not all projects can be specified and scheduled at this time, the Participating Agencies are committed to constructing the necessary regional and right-of-way BMPs to meet the determined load reductions per applicable compliance schedules."</p> <p>Staff interprets this as an explicit commitment that responds directly to the original staff comment of [p.10] although it may not be possible to provide detailed information on specific projects at this time, the WMP should at least commit to the construction of the necessary number of projects to ensure compliance with permit requirements per applicable compliance schedules."</p>	
	12		<p>The draft assumes a 10% pollutant reduction from non-structural controls...additional support for this assumption should be provided, or...the Permittees should commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported.</p>	<p>The following passage was added to Section 4.3: "Currently there is insufficient information to accurately model the implementation of the controls listed in Section 3.2.3 through 3.4.1. These non-modeled controls were instead assigned a modest fraction of 10% for their cumulative load reduction. As part of the adaptive management process the Participating Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported. However, despite the uncertainty surrounding the specific load reductions for these controls, there is support to suggest that the assumption is in fact a modest one." (p. 4-4)</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.	<p>"Section 4.3 was added to the Revised WMP to address the Regional Board comment. The Regional Board also states that, "as part of the adaptive management process, the Permittees should commit to evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported." This commitment was also included in Section 4.3."</p>		<p>"Section 4.3 also clarifies the support for the 10% pollutant reduction and commits to a reevaluation of the assumption: "Agencies will evaluate this assumption during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p>			
	13		<p>For dry weather, the WMP assumes a 25% reduction in irrigation (which results in a 60% reduction in pollutant discharges). Additional support should be provided for this assumption, or as part of the adaptive management process, the Permittees need to commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported. milestones/deadlines...the Permittees need to commit to evaluate this assumption during program implementation and develop alternate controls if it becomes apparent that the assumption is not supported.</p>	<p>A new section (4.2.1) was added to the 2015 WMP that summarized the results of 4 studies (1997, 1999, 2004, 2010) on reductions in residential water use, which suggest that 25% reduction is a plausible outcome. The referenced RAA section is only 1 page and was not changed between the 2014 and 2015 versions.</p> <p>The justification for 25% reductions is plausible, as current response to emergency drought measures have recently demonstrated, but it is hardly "conservative" (as stated in the text); it also presupposed implementation actions that would lead to such an outcome. By using emergency drought regulations as an example of how public education can reduce water use, begs the question of their applicability to sustainable, long-term reductions</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.			<p>In addition to including support of the reduction, Section 4.2.1 of the Final WMP (see RB-AR12391) clearly states:</p> <p>"As part of the adaptive management process the Participating Agencies will evaluate these assumptions during Program implementation and develop alternate controls if it becomes apparent that the assumption is not supported."</p> <p>These additions to the WMP adequately addressed Board staff's comment.</p>			
	14	9 Part VI.C.5.b.iv.(4)(b)-(c)	<p>Section 1.4.2 of Attachment A to the RAA points out that additional potential regional BMPs were identified to provide the remaining BMP volume noted in Table 9-4...The RAA should clarify that sufficient sites were identified so that the remaining necessary BMP volume can be achieved by those sites that were not "excluded for privacy."</p>	<p>No change was made in the document in response to the comment.</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.	<p>"Though specific addresses were not provided in the WMP, these locations are still potential sites for regional structural BMPs and may be used as such. The complete list of potential sites in Section 3 of the WMP, including those where the address has been excluded for privacy, provide the necessary BMP volume needed as established through the RAA."</p>		<p>"The Group has indicated to Board staff that the complete list of potential sites — including the sites that were "excluded for privacy"— provide the necessary BMP volume, and that the "excluded for privacy" sites should be considered since they are still potential regional BMPs sites within the watershed. Since the Group's Pollution Reduction Plan is an "initial scenario" that may adapt over time by substituting BMPs that produce an equivalent volume reduction, the above information given by the Group is sufficient."</p>	<p>This response says "even though we required demonstration that non-excluded sites are sufficient to meet BMP volumes, we accept as sufficient the explanation that they are not sufficient."</p> <p>The purpose of the original comment is therefore unclear.</p>	<p>The original comment directed the Group to "clarify." It did not "require demonstration."</p> <p>The Group does not make the statement that non-excluded sites are sufficient, and makes it clear that the approach relies on both excluded and non-excluded sites. The Group has committed to volume reduction milestones that must be achieved for WMP compliance.</p>	
15	15		<p>...it is important that the Group's actions under its Industrial/Commercial Facilities Program— including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities—ensure that all industrial facilities are implementing BMPs as required.</p>	<p>A substantial amount of new information was added to the RAA, although the organization (e.g., multiple "Attachment A" documents) make a clear understanding of their interrelationships difficult. A new "Attachment E: Minimum Control Measure Guidance" includes 10 pages on implementing an Industrial/Commercial Facilities Program, although the document explicitly "provides guidance" rather than stating a requirement of the WMP.</p>								
14	10	10 Part VI.C.5.b.iv.(4)(c) (Selection of Watershed Control Measures - SB 346 Copper Reductions)	<p>The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions...[O]ther structural and non-structural BMPs may still be needed to reduce Cu loads sufficiently to achieve compliance deadlines for interim and/or final WQBELs.</p>	<p>No change was made in the document in response to the comment.</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.	<p>"As explained in a response table provided to the Regional Board along with the Revised WMP, a change to the document was not necessary. The RAA approach of controlling zinc, in concert with the modeled effect of copper load reductions anticipated through SB 346, anticipates that the application of the Watershed Control Measures and Compliance Schedule of Chapter 3 and 5, respectively, will reduce copper loads sufficiently to achieve compliance deadlines from interim and/or final WQBELs."</p>	<p>The response table was not available for review, but this response suggests that the Board's original judgment ("The draft WMP appears to rely mostly on the phase-out of copper in automotive brake pads...to achieve the necessary copper load reductions") was simply incorrect. If that is the present conclusion of the staff it should be clearly articulated as such.</p>	<p>"The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment"</p>	<p>The basis of the staff's reversal of judgment from the first review is unclear.</p>	<p>The Petitioners only cite the first paragraph of the Staff Response to Petitioners' Detailed Comments in its Memorandum of Points and Authorities and Exhibit D on page 6 (see RB-AR18235). The second paragraph of this response addresses this comment:</p> <p>"The WMP Group has explained its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on the draft WMP."</p>	
	7	11 Part VI.C.5.b.iv.(4)(g)(i) (Minimum Control Measures - Industrial/Commercial Facilities Program)	<p>The revised WMP should ensure that any alternative prioritization method used by a City must also be based on water quality impact...The Group should revise their draft WMP to clearly state when the initial prioritization of facilities will occur. Additionally, the Group should be explicitly clear that during any reprioritization, the ratio of low priority to high priority facilities must always remain at 3:1 or lower to maintain inspection frequencies identified in the draft WMP.</p>	<p>These changes have been made.</p>								
9	11	12 Part VI.C.5.b.iv.(5)	<p>The RAA identifies zinc as the limiting pollutant and notes that this pollutant will drive reductions of other pollutants.</p> <p>If the Group believes that that [sic] this approach demonstrates that activities and control measures will achieve applicable receiving water limitations, it should explicitly state and justify this for each category 1, 2, and 3 pollutant.</p>	<p>A microscopic change in wording has been made on p. 4-1 between the Draft and the Revised WMP.</p> <p>DRAFT: "The RAA has determined that the metal zinc will be the primary or "limiting" pollutant and that by implementing structural and non-structural measures to reduce zinc, the remaining pollutant goals will be achieved."</p> <p>REVISED: "The RAA has determined that the metal zinc will be the primary or "limiting" pollutant and that by implementing structural and non-structural measures in Chapter 3 to reduce zinc, the remaining pollutant goals will be achieved for the Water Quality Priorities defined in Chapter 2. The rationale for this modeling approach is included Section 5.3.1. [sic] of the RAA (Appendix 4-1)." [Note the identical typo is present in the Lower San Gabriel River Revised WMP.]</p> <p>The request for explicit explanations for each pollutant has not been followed.</p>	<p>No additional requirement to address October 28, 2014 Board comment.</p>	No change.	<p>"Section 5.3.1 of the RAA (WMP Appendix A-4) justifies how category 1, 2, and 3 pollutants are controlled through the limiting pollutant approach. This statement, along with a reference to the RAA for justification, is included in Section 4.1. The revised introduction to Section 5 of the WMP provides explicit statements regarding the implementation of this approach in order to achieve applicable receiving water limitations."</p>	<p>The revised text of Section 5 states "This is true for all WQPs—by the nature of the limiting pollutant approach, it is expected that each of the remaining WQPs will be controlled at a faster rate than zinc." As such it is a definition of a limiting pollutant approach but nothing more.</p>	<p>"The Group has added additional clarification on its limiting pollutant approach in Section 5 (pg. 5-1) of the WMP and in Section 5.3.1 of the RAA (Appendix A-4-1, pg. 38). The revised WMP does not state and justify this approach for each category 1, 2, and 3 pollutant; however, this is not necessary given the Group's limiting pollutant approach."</p>	<p>Section 5.3 of the RAA notes "Overall findings of the study estimated that of the anthropogenic sources of copper, approximately 35 percent are attributed to brake pad releases (BPP 2010). Even if the reduction was only half of this amount, the adjustment to the required copper reduction would still result in zinc being the limiting pollutant in LLAR, LCC, and LSGR. Setting aside whether "only half" is a reasonable expectation for copper reductions from SB 346, it suggests that other pollutants might have similarly significant required reductions relative to zinc, but because they were not modeled this cannot be assumed. Simply asserting that zinc is limiting based on only a few constituents (and then redefining the term) does not constitute proof.</p>	<p>The use of a subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants.</p>	
	13	Part VI.C.5.c.ii.(3) (Compliance Schedules - Bacteria)	<p>The draft WMP proposes a final compliance date of September 2030 for bacteria in the LA River Estuary. However, the Group does not provide sufficient justification for this date. The compliance date for the lower Reach 2 and Reach 1 of the LA River is 2024 for achieving the dry-weather WQBELs. A Load Reduction Strategy must be submitted for this segment (Segment A in the TMDL) by September 2016. These dates are more appropriate to guide the schedule to address bacteria discharges during dry weather to the LA River Estuary.</p> <p>Additional milestones and a schedule of dates for achieving milestones should be defined for addressing bacteria discharges to the LA River Estuary.</p>	<p>The Revised WMP was completely nonresponsive to this comment, adding only a single "additional" milestone that did nothing to address the issue being raised: "Achieve final WQBELs. A Load Reduction Strategy is due to upstream contributions and submit report to Regional Water Board", also with a due date of September 23, 2030.</p>	<p>Revise the Load Reduction Strategy (LRS) schedule for Los Angeles River Estuary as outlined in Table 3-8 of the revised draft WMP as follows: a. Revise "Submit LRS to Regional Board" deadline to April 28, 2017. b. Revise "Complete Implementation of LRS" deadline to October 28, 2021. c. Revise deadlines for the achievement of interim or final dry-weather WQBELs to October 28, 2024. d. Revise dates included in the asterisked comment such that, if applicable, a second phase LRS is submitted by October 28, 2025; second phase LRS implementation is completed by April 28, 2029; and final WQBELs are achieved by April 28, 2031.</p>	The requested wording changes and dates were inserted verbatim.						

RAA EVALUATION LETTER

Lower Los Angeles River

		14	(A.1. "General comments")	To the extent that discharges to the Los Angeles River Estuary are to be addressed by the LLAR WMP, the Lower Los Angeles River Group is required to conduct a reasonable assurance analysis to demonstrate that the WQBELs that are established in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL shall be achieved through implementation of the watershed control measure proposed in the WMP. However, the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL was appears to be completely omitted from the draft WMP. The draft WMP did not include and analyze a strategy to implement pollutant controls necessary to achieve all applicable interim and final water quality-based effluent limitations and/or receiving water limitations with interim or final compliance deadlines within the permit term pursuant to the corresponding compliance schedules in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL.	The section on the Dominguez Channel And Greater Los Angeles And Long Beach Harbor Waters Toxic Pollutants TMDL (Section 3.4.1.6) is unchanged between the Draft and Revised WMP. The text [judged inadequate by the Board's comment] continues to read as follows: The Watershed Control Measures described in this chapter will provide reasonable assurance that the Lower LAR Agencies are addressing the TMDL pollutants of concern in their discharges and conducting activities to support the achievement of WQBELs. Monitoring conducted through the CIMP along with an Annual Report of Implementation will document the Lower LAR Watershed Group's progress. In addition, the sediment management efforts in the LAR Estuary will likely achieve significant contaminant reduction." (p. 3-30, both versions)	No additional requirement to address October 28, 2014 Board comment.	No change.	"The Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutant TMDL was addressed in the Draft (and Final) WMP (Section 3.4.1.6). The RAA concludes that the WQBELs of this TMDL are not "limiting", as defined by the limiting pollutant approach which is also justified and explained in the RAA. Zinc was predicted to be the limiting pollutant, and following the strategies and compliance schedules of the WMP (Chapters 3 and 5, respectively), targeting load reductions to achieve zinc WQBELs will simultaneously result in load reduction to achieve the WQBELs of the Toxics TMDL."	"On pgs. 38-39 of Appendix 4, A-4-1, Reasonable Assurance Analysis, the Group demonstrates that their limiting pollutant approach takes into account the Harbor Toxics TMDL by evaluating DDT, PCB, and PAHs in its RAA. The Group states that implementing control measures that control zinc will achieve the load reductions required to achieve the water quality based effluent limitations (WQBELs) of the Harbor Toxics TMDL. This is a reasonable assumption and consistent with the Harbors Toxics TMDL, in which the Board acknowledges that implementation of other TMDLs in the watershed may contribute to the implementation of the Harbors Toxics TMDL."	Footnotes to the tables on p. 38-39 of the RAA acknowledges that "Organic load reductions above influenced by assigned concentrations at half the MDLs (monitoring data below MDLs), and therefore are suspect and not considered limiting." This is a reasonable assumption but should be highlighted more prominently lest the "suspect" data prove to be too low rather than too high.		
		15	(A.2. "General comments")	2. The draft Lower Los Angeles River WMP identified water quality priorities for Los Angeles River (Estuary, Reaches 1 and 2), Compton Creek, and Rio Honda), but not for San Pedro Bay. Pursuant to Section VI.C.5.a., the WMP should be revised to include an evaluation of existing water quality conditions, classify them into categories, identify potential sources, and identify strategies, control measures, and BMPs as required in the permit for San Pedro Bay unless MS4 discharges from the LLAR WMA directly to San Pedro Bay are being addressed in a separate WMP.	San Pedro bay is reference only once in both the Draft and Revised WMP (Section 3.4.1.6) without change. The requested revision was ignored.	No additional requirement to address October 28, 2014 Board comment.	No change.	"MS4 discharges directly to San Pedro Bay will be addressed in the WMP developed by the City of Long Beach as required by the Long Beach MS4 NPDES Permit."	"The Group explained to Board staff that discharges to San Pedro Bay will be addressed by the City of Long Beach's WMP, which is currently under review by Board staff."	Information not previously available.		
		16	(A.3. "General comments")	For structural BMPs, general implementation timeframes are given for the Proposition 84 Grant Award projects (section 5.2), implementation of the Planning and Land Development Program by Permittees (section 5.3.1), and wet weather volume reductions to meet 31% and 50% of the compliance target by 2017 and 2024, respectively. However, greater specificity should be provided with regard to these dates, and additional milestones and dates for their achievement between 2017 and 2024 should be included.	Section 5.3.1 has been nominally revised, but only to the extent that 2017 dates now read "September 30, 2017", and 2024 dates now read "January 11, 2024". No additional milestones and dates for their achievement have been provided.	No additional requirement to address October 28, 2014 Board comment.	No change.				Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) notes on page 20 (see RB-AR18276): "The Group included additional detail on its Prop 84 Grant projects in Section 5.2; however, this section still lacked specific milestone dates. The Executive Officer's approval letter included a condition, directing the Group to provide definitive dates with respect to these projects. The Final WMP includes two new tables, Tables 5-2 and 5-3, which provide detail on the Permittees responsible for each LID BMP, and the deadlines and status for the project tasks (pgs. 5-4 to 5-5)."	
		21	(B.1. "Modeling comments")	Based on the results of the hydrology calibration shown in Table 4-2 and Table 4-3, the error differences between modeled flow volumes and observed data are 11.88% for the Lower Los Angeles River. For calibration purposes, upstream flow volume should be included to determine whether that improves the model performance to within the "Good" or "Very Good" range, per the RAA Guidelines. Once model calibration has been completed, the upstream flow volume can then be excluded when presenting the volume reduction targets in Tables 8-1 to 8-4.	Between the 2014 and 2015 RAA's, the % error improves from 11.88% to 8.72%. There is no text change to explain this difference, nor any apparent differences in the graphed monthly hydrographs for observed and modeled flows.	No additional requirement to address October 28, 2014 Board comment.	No change.				Page 15 of the Staff Response to Petitioners' Detailed Technical Comments in its Memorandum of Points and Authorities and Exhibit D (see RB-AR18244) responds to this issue (this comment was made for the Lower San Gabriel River WMP, but also applies to the Lower Los Angeles River WMP): "The Group has clarified that upstream flows were taken into account in the RAA. Additionally, the Group has also clarified that the tables in Sections 4.1.1 and 4.1.2 have been updated to show the modeled versus observed volume error for the daily calibration results as opposed to the monthly calibration results used in the draft WMP."	
		22	(B.2. "Modeling comments")	"...the predicted baseline concentrations and loads for all modeled pollutants of concern, including TSS, should be presented in summary tables for wet weather conditions."	A new set of tables and maps (Section 5.3.1 of the RAA) has been added to the Revised RAA that is responsive to this comment. Only 7 pollutants are shown, however.	No additional requirement to address October 28, 2014 Board comment.	No change.	"An additional table was added to the RAA to reflect the baseline loads. Found on page 39 as Table 5-6."	"Table 5-6 of the RAA (Appendix A-4-1, pg. 40) reflects baseline loads for organics, metals, and bacteria. Although TSS is not included, the sediment associated pollutants are included (DDT, PCB, and PAH)."			
22	23	19	(B.3. "Modeling comments")	"...the differences between baseline concentrations/loads and allowable concentrations/loads should be presented in time series for each pollutant under long-term continuous simulation and as a summary of the differences between pollutant concentrations/loads and allowable concentrations/loads for the critical wet weather period."	In the Revised RAA, a new section has been added: "Attachment F: Modeled Existing Versus Allowable Pollutant Loadings Plots." As suggested by the title, it provides the requested time series of loads, but not concentrations. No summaries, just time-series graphs, are provided. This is a partial response to one part of the Board's request.	No additional requirement to address October 28, 2014 Board comment.	No change.				The time series plots of loads addresses the comment regarding time series plots. Text was also added to Section 5.3.1 of the RAA to refer the reader to the attachment for the plots [see RB-AR12668]. Additionally, the input and output data provided by the Group includes concentration data [see RB-AR1931]. For the critical conditions, the Group adds Table 5-6 to show baseline loadings during the critical wet weather period to supplement Table 5-7, which summarizes and lists reduction targets for the critical conditions [see RB-AR12670].	
		24	(B.4. "Modeling comments")	"We note that modeling was not conducted for organics (DDT, PCBs, and PAHs). It is not clear why these pollutants were not modeled or why previous modeling of these pollutants could not be used...An explanation for the lack of modeling is needed."	New results in Section 5.3.1 of the Revised RAA suggest that modeling has occurred for these pollutants.			"It should be noted that the original watershed modeling (based on LSPC) supporting the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL did not include simulation of DDT, PCBs, and PAHs. Rather, modeled sediment was used as a surrogate to estimate watershed loadings. Therefore, the 90th percentile of observed concentrations were assigned, meeting requirements set forth by RAA guidance provided by the Regional Water Quality Control Board."	"The Group has clarified that the Harbor Toxics TMDL did not directly model these pollutants, but instead used sediment as a surrogate. To establish baseline pollutant loading, the Group uses the 90th percentile of observed concentrations for DDT, PCBs, and PAHs."			
		25	(B.5. "Modeling comments")	"The report presents the existing runoff volumes, required volume reductions and proposed volume reductions from BMP scenarios to achieve the 85th percentile, 24-hour volume retention standard for each major watershed area...The same information...also needs to be presented for each modeled subbasin...Additionally, more explanation is needed as to what constitutes the 'incremental' and 'cumulative' critical year storm volumes in tables 9-4 through 9-7 and how these values were derived from previous tables. "The report needs to present the same information, if available, for non-stormwater runoff."	A single sentence was added to Section 9-2 in response to one item in this comment: "The incremental column shows the total additional BMP volume required for each milestone while the cumulative measures the total BMP volume required by each milestone to hit the final compliance targets." No other change was made in the document in response to the comment.	No additional requirement to address October 28, 2014 Board comment.	No change.	"Regarding the required information for the modeled subbasins, Attachment B of the RAA was updated to include the requested tables, along with a sentence to provide some clarification in RAA Section 9.2.1 (third paragraph). Regarding non-stormwater runoff, the complete comment from the Regional Board is as follows: "The report needs to present the same information, if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed head area, through the non-stormwater outfall screening and monitoring program, so that the model can be recalibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area." A commitment to the recalibration alternative was included in WMP Section 4.2."	"Attachment B to the revised WMP includes detailed jurisdictional compliance tables that include runoff volumes, required volume reductions, and proposed volume reductions for each subwatershed. Language was added in section 9.2.1 of the RAA (Appendix, pg. 55) that clarifies the incremental and cumulative columns in Tables 9-4 through 9-7. Section 4.2 of the revised WMP commits to re-calibrate the RAA based on data collected through the monitoring program (which includes the non-stormwater outfall screening and monitoring program)."	This commitment is stated as follows: "The Reasonable Assurance Analysis for the Lower Los Angeles River Watershed is included in Appendix A-1. As data is collected through the monitoring program the model will be re-calibrated during the adaptive management process, which will allow for improved simulation of physical processes such as flow volumes and volume retention BMPs." Section 9 of the WMP, however ("Adaptive Management Process"), however, provides no clear assurances that such recalibration will occur. This "commitment" should be strengthened and made explicit.	Section V.I.C.8 (pg. 69) of the LA County MS4 Permit (as amended by Order WQ 2015-0075) sets June 30, 2021 as the latest date at which an updated RAA must be submitted to the Regional Water Board (see RB-AR1713). "At the very least the Group must submit revised WMP with an updated RAA by June 30, 2021, or sooner as directed by the Regional Water Board Executive Officer or as deemed necessary by Permittees through the Adaptive Management Process, for review and approval by the Regional Water Board Executive Officer."	
		26	(B.6. "Modeling comments")	The report needs to present the same information [see above, comment B5], if available, for non-stormwater runoff. Alternatively, the report should include a commitment to collect the necessary data in each watershed area through the non-stormwater outfall screening and monitoring program, so that the model can be recalibrated during the adaptive management process to better characterize non-stormwater flow volumes and to demonstrate that proposed volume retention BMPs will capture 100 percent of non-stormwater that would otherwise be discharged through the MS4 in each watershed area.	No change was made in the document in response to the comment.	No additional requirement to address October 28, 2014 Board comment.	No change.				As explained in Section 7.1.2. of the RAA (see RB-AR12681), for non-stormwater flows, the Group assumes a 10% load reduction from nonstructural BMPs and a 25% reduction in irrigation, which leads to another modeled load reduction. The remaining load reduction required for dry weather is assumed to be addressed by structural BMPs. Since the Group is committed to recalibrate modeling with new monitoring data and evaluate the above assumptions, the revised WMP adequately addressed Board staff's comment.	
CONDITIONAL APPROVAL LETTER												
		23			Include the revised LRS schedule for Los Angeles River Estuary (Table 3-8) in Chapter 5 of the revised draft WMP as part of the LLAR WMG's compliance schedule.			Table 3-8 is now reproduced as Table 5-4 (see #13 above).				
		24			Correct Table 3-2 of the revised draft WMP (pg. 3-9) so that it shows that the City of Paramount will implement the new fourth term nonstructural minimum control measures. Additionally, revise any inapplicable control measures inadvertently listed for LACFCO.			These changes have been made.				
		28	25		Revise Section 5.2 of the revised draft WMP to include a table that lists definitive interim and final milestone achievement dates and the responsible Permittee(s) for each LID BMP in the Proposition 84 project. The responsible Permittees within the LLAR WMG will be responsible for meeting these milestone achievement dates. Currently, the revised WMP only provides "expected dates for construction and completion.			Done.				
		26			Correct the units for the cadmium concentrations (i.e. 0.55 mg/L and 0.26 mg/L) referenced in Section 2.2.5 of the revised draft WMP (pg. 2-23).			Done.				

Lower Los Angeles River

27				Remove "Statewide Trash Amendments" from Table 5-1 of the revised draft WMP, since the amendments are inapplicable to the Los Angeles River Watershed given the existing trash TMDL, and change the Chapter 3 ID for "Increased street sweeping frequency or routes" to TCM-PAA-3.	Done.					
28	29			In Section 4.3 of the revised draft WMP, include references to Table 3-2, Table 3-11, and any other relevant tables that list BMPs contributing to the 10% pollutant reduction assumption for non-modeled BMPs.	The only change in this section is the added sentence, "The nonstructural measures are summarized in Tables 3-2 and 3-11."					
29	30			Provide further detail and specificity in Section 3.4.2.2 of the revised draft WMP on what incentives are being included in TCM-NSWD-1 and whether any incentives are being offered apart from Metropolitan Water District's rebate program.	Done.					
30	31			The City of Long Beach submitted its Statement of Legal Authority to the Los Angeles Water Board on February 26, 2015. Include this Statement of Legal Authority in the WMP appendix section containing the other Permittees' legal authority statements.	Done.					

Los Angeles River Upper Reach 2

Index LSR	Index LLAR	INDEX LAR UR2	Permit Citation	Board Comments from October 27, 2014	Analysis of Revised WMP (January 27, 2015) in response to Board Comments	Conditional Approval Requirements (April 28, 2015)	Analysis of Final WMP (June 12, 2015)	In August 3, 2015 LAR UR2 Response Letter	Analysis of Response Letter statements	Staff Response (August 2015)	Analysis of Staff Response	Staff Response (January 2016)		
		1	Part VI.C.5.a.i. Waterbody-Pollutant Classification (page 59)	The Group must identify and address Category 3 Waterbody-Pollutant Combinations (WBPCs). The water quality monitoring data from the sites located downstream is appropriate to use to characterize the receiving water quality in the vicinity of the Group's watershed area. The Group can use its monitoring data once available to confirm whether the Category 3 WBPCs are appropriate or whether the list should be modified. Regional Water Board Board note that Table 2-7 identifies several pollutants as Category 3; however, the reasonable assurance analysis (RAA) does not address these nor does the draft WMP analyze load reductions for these pollutants from the proposed watershed control measures. The revised WMP must include a discussion of the Category 3 pollutants identified in Table 2-7, and provide a similar analysis to what is provided for Category 1 pollutants.	The recommended action was not done, with the reasoning (Revised WMP section 2.4, page 33): "... Category 3 pollutants overlap significantly with Category 1 or 2 pollutants and in some cases, such as fecal coliform and E. coli, total nitrogen and nitrate, they are essentially the same pollutant. Carrying out separate analyses for these overlapping WBPCs risks producing an RAA with conflicting implementation priorities, based on inaccurate assumptions regarding the independence of the variables and an [sic] misspelled implementation effort on duplicative parameters." However, the Category 3 pollutants total phosphorus, pH, total suspended solids, chromium, and nickel are not represented on the Category 1 or 2 lists. It is untrue that total nitrogen (TN) and Category 1 inorganic nitrogen compounds are "the same pollutant." This mandatory requirement ("The Group must identify and address Category 3 waterbody-Pollutant Combinations") was not met.	No Requirement to address October 27, 2014 Board comment.	No change from Revised WMP.	The assertion was discussed with Regional Board Staff and a consensus formed that, for RAA purposes, Category 2 and 3 pollutants were suitably well represented by Category 1 pollutants. Sections 2.4 and 4.2.3 of the Final WMP were revised to better convey that Category 2 and 3 pollutants were sufficiently similar to Category 1 pollutants, to satisfy RAA requirements. Monitoring will develop additional data for the AMP."	There is no change in wording between the Revised and Final WMPs, Section 2.4, contrary to this statement. Section 4.2 was substantially rewritten between Revised and Final WMPs. However, there is no reference in this section to Category 2 or Category 3 pollutants, so it is unclear to what this statement is referring. Every version of the WMP (Draft, Revised, Final) includes the same non-responsive text in Section 2.2 and questioned in the Board's initial comments from October 2014: "Category 3 pollutants were not identified for LAR UR2 WMA because all available water quality data was obtained downstream of LAR UR2 WMA, therefore its applicability is unknown."	See #9	See Response #9			
		2		The recommended action was not done, under the following reasoning (Revised WMP section 2.3, page 30): "...the LAR UR2 WMA Permits were asked to provide summary data resulting from past industrial and commercial inspections, [which] did not provide useful information. Monitoring data from non-MS4 Permittees in the LAR UR2 WMA, were also reviewed, however of 161 General Industrial Permittees within the WMA, only 35 were found to have submitted data..." "...did not meet the RAA Guideline criteria for being substantive [sic] and defensible..." TMDL pollutant source assessments and models reviewed during preparation of the WMP were inconclusive and overly broad upon which to take actionable source determinations or source control efforts." Despite data quality issues, there are some data from the region, and some of those are reliable; from the literature of the field, and from permitted industries elsewhere. Using the best available data for the purpose would not be inconsistent with other modeling and analysis strategies pursued in the WMP; e.g., almost all receiving water data relied upon in this WMP are outside the reach in question.	In addition to conducting inspections and follow-up enforcement as required under the 2012 LA County MS4 Permit Industrial/Commercial Facilities Program, include specific actions and interim dates to enhance industrial facility inspections and follow-up enforcement, if necessary...to achieve the "Non-MS4 NPDES Parcel" control measure by December 2017 as indicated in Table 5-1 of the revised draft WMA. Indicate each Permittee's responsibilities for these actions. Indicate how efforts will be focused on achieving progress toward reducing discharges of zinc and bacteria. Related to this, correct discussion in Section 4.3.2.3 of the revised draft WMP, which states that the 2001 LA County MS4 Permit did not require that Permittees enforce BMPs at industrial and commercial facilities...enforcement is not change from the 2001 permit.		The original October 27 comment remains inadequately addressed in response to the April 29 comment, the wording in what was Section 4.3.2.3 of the Revised WMP (now section 4.4.4 of the Final WMP) states "There are many substantial changes between the 2001 to 2012 MS4 Permits which can reasonably be assumed to result in substantially reduced pollutant generation, increased source controls, and significant watershed control measure load reductions." Presumably this is in response to the observation that "enforcement is not a change from the 2001 permit," but in fact its meaning is the opposite of what the Board comments intended (i.e., emphasizing changes from the 2001 permit instead of acknowledging continuity of regulations). Nowhere in the Final WMP is "enforcement" referenced with respect to Industrial Storm Water Permits or permittees.	"WMP section 2.3 was modified to reiterate our prior findings and board staff acknowledgement that: 1) the majority of the SMARTS data did not meet the "defensible" standard; 2) there are insufficient land use categories in the current model to accommodate the many Industrial General Permittees, and 3) including these discharges could distort BMP designs.	Response is limited to only one of the several issues raised by the Board's initial and follow-up comments, namely the use of the SMARTS database. Other elements remain unaddressed.	"Section 2 of the revised and final WMP was amended to include details on the Group's analysis of non-MS4 industrial stormwater data. The following discussion was included on page 30 both the revised WMP and final WMP."	Response is limited to only one of the several issues raised by the Board's initial and follow-up comments, namely the use of the SMARTS database. Other elements remain unaddressed.	The initial comment that is quoted calls for the Group "to assess and potentially refine estimates," which the Group has done. Furthermore, the initial comment calls for the Group to review inspection findings, which the Group has also done. The full staff response from August 2015 (see RB-AR18258 to RB-AR18259) is: "Section 2 of the revised and final WMP was amended to include details on the Group's analysis of industrial stormwater data. The following discussion was included on page 30 of both the revised WMP and final WMP: Monitoring data from non-MS4 Permittees in the LAR UR2 WMA [watershed management area], were also reviewed, however of 161 General Industrial Permittees within the WMA, only 35 were found to have submitted data to the State Storm Water Multiple Application and Report Tracking System (SMARTS) website. Initially, this data was briefly reviewed and appeared to have little diagnostic value in predicting pollutant sources or loads. Following receipt of the Board WMP comment letter, the analysis was repeated and again the data was found to be of limited value in guiding either current pollutant source assessments or developing credible industrial land use pollutant EMCA. In the majority of cases, the monitoring data appeared variable and inconsistent, reported with mistaken concentration units, and the analytical parameters tracked were unrelated to likely facility pollutants or observed watershed impactions. A determination was made that this data did not meet the RAA Guideline criteria for being substantive and defensible. When presented with this analysis, Board staff agreed that the data were not appropriate to use to refine estimates of pollutant loading from industrial facilities within the LAR UR2 WMA. Consequently, the LAR UR2 Watershed Management Group relied upon the regional event mean concentrations (EMCA) to determine baseline loading from industrial areas within its watershed area. The analysis of monitoring data submitted by general industrial stormwater permittees within the subwatershed and discussion of TMDL source assessments in Section 2.3, and the use of regional land use specific EMCA in the RAA, adequately addressed Board staff's comment."		
		3	Part VI.C.5.a.ii	Section 2.3 of the Revised WMP had additional text that asserts "As apparent from the following subsections, TMDL pollutant source assessments and models reviewed during preparation of the WMP were inconclusive and overly broad upon which to take actionable source determinations or source control efforts," and that "Current models are inadequate for distinguishing copper loads from a residential area adjacent to a highway with those from a rural area." If additional information such as "subsections" are referenced, almost no text has changed in them between the Draft and Revised WMP, and so it is unclear what is being referenced. ...there is no indication that the model results from the different TMDLs were used in the pollutant source assessment. The draft WMP should consider existing TMDL modeling data, where available, when refining the source assessment.	No additional requirement to address October 27, 2014 Board comment.	No further changes.	"WMP section 2.3 was expanded to explicitly state that prior findings from TMDL source assessments and models were inconclusive and overly broad for initiating actionable source assessments. One example being oversight of the impact of SB-346 on copper in the Los Angeles River Metals TMDL."	The referenced "expansion" was made in the Revised WMP and was unchanged in the Final WMP. However, the Lower LAR WMP made direct use of the TMDL modeling results and apparently found them quite useful (that being Section 2.3.4). Why such a difference in value was determined by the same Board staff on the same river is unclear.	The Group and Board staff discussed the existing TMDL modeling and found it too general to refine the Group's source assessment for its watershed area. The Group did, however, add detail to the discussion of TMDL source assessments in Section 2.3 of its Revised WMP, including consideration of recent TMDL monitoring data. This is appropriate as the comment was for the Group to consider existing TMDL modeling data."	The Board is technically correct, the use of these data were "considered" (and obviously rejected). Acceptance of such pro forma response, however, particularly in light of the LLAR use of these data, is nonetheless surprising.	Furthermore, the LAR UR2 Group's source assessment (see Section 2.2 of the Group's Final WMP, RB-AR376 to RB-AR376) draws similar conclusions as the LLAR Group does in their source assessment (see Section 2.3.4 of LLAR Final WMP, RB-AR12300), namely: 1) During dry weather, metals limits are rarely exceeded and; 2) During wet weather, metals loads are primarily attributed to stormwater runoff There is no further issue since the Petitioners state that the permit interpretation is technically correct, the Group did take TMDL source investigations into account, and the Group comes to similar conclusions regarding the sources of metals within their jurisdiction as compared to the Group cited by the Petitioners.			
		4		A process and schedule for developing the required spatial information on catchment areas to major outfalls should be proposed, if this information does not already exist. If additional information such as catchment areas for the major outfalls still needs to be developed, the process and schedule for developing this should be indicated.	It is unclear whether this comment was considered or addressed. Table 3.5 ("Estimate Runoff Volume and Regional BMP Area by City and Catchment") appears unchanged in both the Draft and Revised WMP without change, implying that more was expected under the Board comment.	No additional requirement to address October 27, 2014 Board comment.	No further changes.	Board staff were directed to the CIMP which demonstrated that seven outfalls conveyed about 79% of the LAR UR2 WMA tributary area. Definition of remaining catchments would occur through the ICID and NSW Outfall Prioritization Permit programs."	It is unclear if a schedule is associated with either of these programs.	"The Group clarified that some of the required spatial information was presented in the Coordinate Integrated Monitoring Program (CIMP). For the remainder, the Group committed to developing it as it implements its illicit connection/illicit discharge activities, non-stormwater screening and prioritization, and source identification."	It is unclear where this "commitment" resides, and if it is binding.	The Group states their commitment in Section 3.2 of its revised CIMP (see RB-AR618). Collection of the information is a requirement of the LA County MS4 Permit MRP and the Los Angeles Water Board can take action if the Group fails to complete the collection of this information during CIMP implementation.		
		5	Part VI.C.5.a.v. Prioritization (page 60)	New text was added to introduce Table 2-7 (Revised WMP, p. 33): "... Category 3 pollutants overlap significantly with Category 1 or 2 pollutants and in some cases, such as fecal coliform and E. coli, or total nitrogen and nitrate, they are essentially the same pollutant. Carrying out separate analyses for these overlapping WBPCs risks producing an RAA with conflicting implementation priorities, based on inaccurate assumptions regarding the independence of the variables and an [sic] misspelled implementation effort on duplicative parameters." While Table 2.7 acknowledges the past due dates for the Los Angeles River Nitrogen Compounds and Related Effects TMDL and final deadlines for the LA River Metals TMDL, LA River Bacteria, and other TMDLs, the LA River Metals TMDL includes interim dry and wet weather limitations with a deadline (2012) that has passed. The WMP needs to specify why this TMDL is not included in Table 2-7 in the priority category (highest priority), since some compliance deadlines have already passed.	No additional requirement to address October 27, 2014 Board comment.	No additional requirement to address October 27, 2014 Board comment.	Except for correcting the typographic error on the bottom of page 33 introduced into the Revised WMP ("... an misspelled..."), Table 2-7 and its explanatory text are unchanged in the Final WMP. This comment was not addressed.					This comment was previously raised and addressed in the Assessment of NRDLAWKHTB March 25, 2015 Letter [see RB-AR18260 to RB-AR18261] as follows: "...the revised and final WMP does accurately identify the past interim compliance milestones for metals in Table 1-6 (p. 18) and appropriately identifies metals as Category 1 pollutants in Table 2-6 and 2-7 (pp. 29, 34). Both also note the following in Section 2.3 Source Assessment, which informs the Group's prioritization of pollutants: "As summarized in the Los Angeles River Metals TMDL CIMP Annual Reports, dry-weather monitoring data from stations adjacent to the LAR UR2 WMA were rarely in exceedance for metals." The revised and final WMP clearly states that the Group will continue to monitor for dry weather metal concentrations, as proposed in the CIMP, and implement the structural and non-structural watershed control measures identified in Section 5 to further identify and control the sources of metals in runoff and LAR UR2 WMA receiving waters..." This adequately addressed Board staff's comment."		
		6		The draft WMP does not clearly specify a strategy to comply with the interim WQBELs for the LA River metals TMDL (January 11, 2012; January 11, 2020 and January 11, 2024 deadlines). Table 3-1 presents a phased implementation plan, which suggests that Phase 2 activities will be conducted to meet the 2020 deadline and Phase 3 activities to meet the 2024 deadline; however, the draft WMP needs to be revised to include documentation that the 2012 past deadlines have been achieved or specify an appropriate strategy for achieving compliance with the past due interim WQBELs.	Section 5.1 of the Revised WMP has added a single sentence in response to this comment: "The Los Angeles River Trash TMDL will be implemented by October 1, 2015, in order to meet the annual compliance assessment date on September 30, 2016." The Revised WMP also maintains from the Draft WMP the caveat: "This WMP, including the schedule aspect, will be updated through the iterative management process. Therefore the schedule identified is always tentative." Thus, there is now acknowledgment that requirements exist prior to 2020, but neither a "strategy" for future compliance nor a documentation of past compliance are presented.	No additional requirement to address October 27, 2014 Board comment (but see #2 below).	There is no evidence that this comment was further considered. Table 3-1 is unchanged in every version of the WMP, and the introductory text for Section 5 ("Compliance Schedule and Cost") is unchanged between the Revised and the Final WMP (except for the correction of a typographic error). It reads "Interim and final compliance dates in the LAR Metals and Bacteria TMDLs are the primary drivers for the LAR UR2 WMA RAA and WMP Plan implementation schedule. The dates identified in this WMP Plan are subject to the procurement of grants or other financing support commensurate with the existing and future fiduciary responsibilities of the Permittees. They may furthermore be adjusted based on evolving information developed through the iterative adaptive management process identified in the 2012 MS4 Permit or similar Plans within future MS4 Permits. There is no "documentation" or commitment to meet interim WQBELs; this comment has been completely ignored.	The BMP implementation schedules and Figures 5-1 to 5-6 were reviewed with Board Staff to clarify how they anticipated this comment. Data from the nitrogen RAA, showing that existing nitrogen loads were already below the allowable Loads, were shared with Board staff. Section 4 of the Final WMP was completely reformatted and expanded to more clearly convey data developed for the draft RAA and WMP regarding nitrogen loads and compliance with interim WQBELs."	Figures 5-1 through 5-6 were revised for the Final WMP with dramatic (but undocumented) changes to several of the asserted load reductions (particularly copper). These changes do not address the original Board comments as asserted for the draft RAA and WMP regarding nitrogen loads and compliance with interim WQBELs."	"Sections 4 and 5 of the Revised WMPs were revised to add clarity and specificity to the Group's phased implementation schedule relative to interim TMDL compliance deadlines. The Revised WMP also summarizes monitoring data from the LA River Metals TMDL, coordinated monitoring program, which indicates that metals rarely exceed receiving water limitations during dry-weather at monitoring stations adjacent to the LAR UR2 watershed management area. (The interim compliance deadline of 2020 for metals in dry weather is one of the nearer term deadlines for the Group.) Regarding compliance with the LA River nitrogen compounds TMDL, the Group implemented an expand discussion in the RAA explaining that no nitrogen pollutant reduction was required. The Group will further evaluate whether past interim and final deadlines have been met as data are collected through the Group's CIMP."	This response continues to address only a subset of the original comment elements, which focused on commitments and specificity for compliance strategy and schedule. Relevant changes presumably should be found in Section 5.1, "WMP Implementation Schedule," but as noted in the earlier analysis of the Revised WMP these changes are minimal and non-responsive. It appears as though all such commitments, originally articulated as part of the WMP, have now been deemed to future evaluations of unspecified timing and constraint.	This contention was previously raised by Petitioners and addressed by the Los Angeles Water Board in the Staff Response to Petitioners' Detailed Technical Comments, which discusses how the Group demonstrates that its phased BMP implementation will meet interim WQBELs for metals and bacteria and includes a discussion explaining that no nitrogen reduction is required. On page 20 [see RB-AR18249] staff states: "Sections 4 and 5 of the Revised WMPs were revised to add clarity and specificity to the Group's phased implementation schedule relative to interim TMDL compliance deadlines. The Revised WMP also summarizes monitoring data from the LA River Metals TMDL, coordinated monitoring program, which indicates that metals rarely exceed receiving water limitations during dry-weather at monitoring stations adjacent to the LAR UR2 watershed management area. (The interim compliance deadline of 2020 for metals in dry weather is one of the nearer term deadlines for the Group.) Regarding compliance with the LA River nitrogen compounds TMDL, the Group implemented an expand discussion in the RAA explaining that no nitrogen pollutant reduction was required. The Group will further evaluate whether past interim and final deadlines have been met as data are collected through the Group's CIMP." On pages 23-24 [see RB-AR18252 of the same document, staff also states: "The Group submitted the model input and output file in response to Board staff's request. The revised WMP relies on a storm water volume capture approach to demonstrate compliance with WQBELs and receiving water limitations. The modeling calculated the necessary volume capture to achieve compliance with WQBELs and receiving water limitations. Section 4.3.1, Target Load Reductions, includes the calculated volume capture of the BMPs that need to be implemented to achieve compliance. Table 5-1 of the revised WMP identifies the proposed control measure implementation schedule based on the phasing needed to achieve compliance with interim and final compliance targets for both bacteria and metals. The final WMP was revised in response to a condition in the Executive Officer's approval letter to modify the title of Table 5-1 to Control Measure Implementation Schedule, removing the word "tentative" from the title."		
		7		Further discussion of current compliance with the LA River nitrogen compounds TMDL, for which there is a final compliance deadline of 2004, is also needed, since this is a priority pollutant in Table 2-7. Section 1.3.3 of the CIMP notes that MS4 discharges appear to comply with applicable loads already, but additional discussion and support for this assertion should be included in the WMP text.	There is no evidence that this comment was considered or addressed.	No additional requirement to address October 27, 2014 Board comment.	Reference is made to the existence of supporting information in the Final WMP Section 4.2.4, although no "additional discussion" is provided: "For total lead and nitrogen, critical condition baseline loads achieve the MS4 Permit Attachment O WQOs, therefore no reductions are necessary..." (Final WMP, p. 94)					Section 4.2.3 of the Final WMP (see RB-AR6434) includes a discussion on baseline pollutant load estimation for nitrogen.		
		8		The referenced sentence (p. 33 of both the Draft and Revised WMPs) is unchanged. The Revised WMP now includes a revision to Table 3-8, "Potential Non-Structural BMP Enhanced Implementation Efforts" that provides identical information but has removed the word "Consider" from every action (e.g., "Consider more frequent street sweeping" in the Draft WMP is now "More frequent street sweeping" in the Revised WMP). Despite the deletion of one word, the table is introduced with text that is unchanged from the Draft WMP: "Each LAR UR2 WMA City will have the flexibility to implement some or all of the enhancements, which may vary among the group members based on their individual assessment of priorities and the applicability of the potential enhancement" (p. 67). This draft WMP needs to include a firm schedule for the implementation of Trash TMDL SMPs.	Section 3.1.5 of the revised draft WMP notes that the remaining catch basins that are not retrofitted with full capture devices are incompatible with the devices and will probably require significant and costly reconstruction prior to October 1, 2015. Revise the revised draft WMP to include a strategy to comply with the Los Angeles River Trash TMDL. When drafting a strategy, the LAR UR2 WMA should consider the language in the Tentative Basin Plan Amendment for the Reconsideration of the Los Angeles River Watershed Trash TMDL, which was publicly noticed on April 3, 2015. The Final WMP has further updated Table 3-8 and re-titled it "Non-Structural BMP Enhanced Implementation Efforts and Dates" that includes implementation dates of some trash-TMDL-related actions for individual jurisdictions, but the table is introduced with text that is unchanged since the original Draft WMP: "Each LAR UR2 WMA City will have the flexibility to implement some or all of the enhancements, which may vary among the group members based on their individual assessment of priorities and the applicability of the potential enhancement" (p. 67). In all drafts, this falls far short of a commitment to a firm schedule" required by the Board comment.									Section 3.1.5.2 of the Final WMP (see RB-AR385 to RB-AR386) includes a strategy to comply with the Los Angeles River Trash TMDL. This strategy makes references to the then-tentative Basin Plan Amendment regarding the Reconsideration of the Los Angeles River Trash TMDL. The Group's strategy includes checking if alternative structural criteria has been developed to allow the installation of additional CPS and ARS systems in un-retrofitted catch basins; a second round of full capture device installation; and identification of remaining catch basins for reconstruction. Furthermore, until funding for reconstruction can be identified, partial capture and institutional controls will continue and be used to assess TMDL compliance.

11	12	9		<p>In the Reasonable Assurance Analysis (RAA) Section 4, the original "justification" for this assertion was stated in the Draft WMP (p. 69) as follows:</p> <p>"The limiting pollutant used to control the implementation efforts of the LAR UR2 WMA is bacteria for the area draining to the Los Angeles River and metals for the area draining to the Rio Hondo. Bacteria and metals were determined to be the limiting pollutants because they meet the following criteria:</p> <ul style="list-style-type: none"> • Relatively high priority with respect to meeting TMDL WLAs and/or other WQOs; • Conservative with respect to attenuation during fate and transport modeling; and • Require the greatest amount of volumetric control to achieve TMDL WLAs and other objectives." <p>Alternatively, if Category 2 and 3 pollutants will not be addressed by focusing on the limiting pollutants, identified above, the WMP must separately address Category 2 and Category 3 pollutants.</p>	<p>The Final WMP includes the following modified text (Section 4, p. 73):</p> <p>"For the LAR UR2 WMA TMDL, identified bacteria and metal pollutants were anticipated to be priority and BMP design limiting pollutants as a result of the following physical characteristics, approved RAA guidelines, and regulatory criteria:</p> <ul style="list-style-type: none"> • Ambitious TMDL interim and final compliance schedules for achieving WLAs; • Reported and previously observed conservative fate and transport characteristics; and • Treatability and regrowth characteristics that impose implementation of volumetric watershed control measures on Permittees in order to demonstrate achievement of TMDL WLAs and WQOs." <p>This (minimally) revised text does not provide meaningful support for this assertion, particularly since these attributes are supposed to apply to both metals and bacteria alike, two very different pollutants.</p>	<p>"Section 2.4 of the Revised WMP was revised to clarify that Category 2 and Category 3 pollutants were well represented by Category 1 pollutants (see Table 2-7). For example, "coliform bacteria," a Category 2 pollutant, is represented by E. coli, a Category 1 pollutant, while various metals identified as Category 3 pollutants are represented by other metals that are Category 1 pollutants. This adequately addressed Board staff's comment."</p>	<p>This is addressed in Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) on pages 1-2 (see RB-AR18267 to RB-AR18268):</p> <p>"Tables 2-6 and 2-7 in the revised WMP (pp. 29, 34) and final WMP (pp. 29, 34) list potential Category 3 pollutants. Both note that the data used to identify these Category 3 pollutants are from outside of the Group's boundaries. Therefore, the WMP commits to obtaining data applicable to the LAR UR2 subwatershed area to update the Category 3 pollutants through the Group's Coordinated Integrated Monitoring Program (CIMP) and the adaptive management process. This is a reasonable approach as receiving water monitoring under the previous LA County MS4 Permit was limited to several mass emissions stations (typically one per watershed), which limits the ability of [most] groups to identify Category 3 pollutants.</p> <p>While it is true that TN and inorganic nitrogen compounds are not the same pollutant, in the RAA, the use of subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants. For example, the Countywide Watershed Management Modeling System (WMMMS) models TN, which includes both inorganic and organic nitrogen compounds.) This is based on the knowledge that the baseline loading, target reductions and anticipated reductions with best management practices (BMP) implementation of other pollutants with similar sources and fate and transport mechanisms will be represented by the subset of modeled pollutants. It is also based on the fact that some pollutants will drive BMP implementation (i.e., these "triggering" pollutants will require the most aggressive suite of BMPs to meet water quality requirements). The revised and final WMP adequately describe this approach and the rationale in Section 4.0 on page 70 and 73, respectively."</p>			
		10	<p>Part VI.C.5.b. Selection of Watershed Control Measures (pages 61-64)</p>	<p>Although the draft WMP includes several specific regional BMPs (Section 4.3.3.3) the specific LID street projects and their locations are not identified. The draft WMP should provide as much specificity as feasible in describing the potential locations for LID streets. Additionally, the permittees that would be responsible for implementing LID street projects should be specified.</p>	<p>Include interim milestones for LID Street implementation for each Permittee, associated with the LID Street Required Tributary Area by LAR UR2 WMA Permittee in Table 5-1 and Figures 5-1 to 5-4 of the revised draft WMP that demonstrate progress toward achieving the final deadline of 2017.</p>	<p>"Section 4 of the Final WMP was completely reformatted and expanded, including section 4.5.2 which now identifies examples of Green or LID streets currently under construction by LAR UR2 WMA Permittees, Cities with Pavement Management Plans or Systems, which guide the implementation of LID or Green Streets, were identified in WMP Sections 3.2.2 and 4.5.2."</p>	<p>Section 4.5.2 does articulate seven modeled LID projects, but it is not clear whether any of them have been committed to construction (the text states, "LID Streets will be implemented on smaller street projects"). Indeed, this section goes on to warn "It is important to note that the majority of LAR UR2 WMA Permittees do not yet have a Pavement Management System (PMS), or pre-approved street maintenance budget, and that LID or Green Street project implementation may vary substantially from one year to the next," suggesting an absence of any binding commitment.</p>	<p>"Table 4-10 of the revised and final WMP lists the extent of LID streets that will be required within the jurisdiction of each LAR UR2 Permittee."</p>	<p>The text introducing Table 4-10 ("2028 LID Based Redeveloped Area in Acres by City and Land Use") reads: "Average annual redevelopment rates released by the City of Los Angeles (City of Los Angeles Bureau of Sanitation, 2009) were used to establish what area within each land use category can be expected to be retrofitted consistent with the Permit's post-construction onsite retention requirements." The remainder of this section (4.4.2) discusses modeling assumptions. There may be a "requirement" associated with these areas that "can be expected to be retrofitted," but the WMP does not state that to be the case.</p>	
		11		<p>The draft WMP asserts that the "legal authority demonstration in respect to the WMP appears more specific than that required in the Annual Report." The Plan appears to acknowledge appropriate legal authority to construct most projects but note that some of the proposed projects are located within property easements owned by other entities. The draft WMP needs to provide greater detail regarding the Group's legal authority.</p>	<p>The Revised WMP has added statements of Legal Authority provided by the Cities of Bell, Bell Gardens, Commerce, Cudahy, Huntington Park, Maywood, and Vernon, and Los Angeles County Flood Control District.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>None needed.</p>			
		12		<p>There is no evidence that this comment was considered or addressed. No text involving mention of this process was changed. Consistent with the Board comment, the complete absence of characterizing "adaptive management" or how it will be implemented is a fundamental shortcoming of this WMP (and one that applies to the LLAR and LSGR as well, despite an absence of Board comments on this topic for those WMPs).</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>No change.</p>			<p>This contention was previously raised by the Petitioners and was addressed by the Los Angeles Water Board in Staff's Assessment of NRDC/LAWK/HTB March 25, 2015 Letter Commenting on Revised Watershed Management Programs (WMP) - Los Angeles River Upper Reach 2 Response 6 (p. 7) (see RB-AR18263).</p> <p>Adaptive management is a well understood approach that is used in many fields, including watershed and stormwater management. In fact, USEPA includes a module on adaptive management in its on-line watershed academy. The permit provides a general structure, timeline and process for adaptive management of Watershed Management Programs. (see RB-AR18212 to RB-18215)</p> <p>In reviewing the draft Watershed Management Programs, Board staff found that Permittees' descriptions of the adaptive management process largely mirrored the description in the permit; therefore, the Executive Officer provided additional direction in his approval of the Watershed Management Programs with regard to expectations as to the scope and focus of adaptive management. (see RB-AR6334 to RB-AR6335 for the direction provided to the LAR UR2 Group.)</p>	
9	8	13		<p>The text relating to the assumed 5% load reduction was revised as follows: "Based on input from the Regional Board, load reductions derived from non-modeled non-structural BMPs can be assumed to be five percent of baseline loads." (Draft WMP, p. 67)</p> <p>"Load reductions derived from non-modeled non-structural BMPs are assumed to be five percent of baseline loads, based on the extensive additional permit requirements and programs as previously identified in Section 3.1.1." (Revised WMP, p. 67)</p> <p>The draft WMP assumes a 5% load reduction from non-structural BMP enhancements. However, Section 3.3.1 of the WMP only indicates that such enhancements would be considered, and a firm commitment to implement them is lacking. The draft WMP needs to include specific commitments to implement the non-structural BMP enhancements, or it should not rely upon the 5% load reduction anticipated from these non-structural BMP enhancements to meet compliance deadlines in this permit term or the next permit term.</p>	<p>However, this change was not carried over into Section 4.3.2.3, which states in both versions "Load reductions derived from non-modeled, non-structural BMPs were assumed to be 5 percent of baseline loads for all pollutants following discussions with the Regional Board." (Draft WMP, p. 62; Revised WMP, p. 67).</p> <p>Nons of these "changes" are substantive responses to this comment.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>The discussion of an assumed 5% load reduction was further revised between the Revised and Final WMP as follows: "Load reductions derived from non-modeled, non-structural BMPs were assumed to be 5 percent of baseline loads for all pollutants following discussions with the Regional Board." (Revised WMP, p. 67)</p> <p>"Following discussions with the Regional Board, load reductions derived from non-otherwise modeled, non-structural BMPs were estimated to results (sic) in a modest 5 percent of baseline loads for all pollutants." (Final WMP, p. 100)</p> <p>Although the "assumptions" of the Revised WMP are now "estimates" in the Final WMP, this is not a substantive response to this comment.</p>	<p>Table 4-12 only demonstrates that if the 50% reduction occurs then the milestones will be reachable. A "conservative assumption," however, would evaluate with reasonable skepticism how the reduction in the copper content of new cars' brakes would translate into reduced copper loadings, based on the 2007 AquaTerra study, a "conservative" estimate would be that 15% of copper (the low-end finding) arises from brake pad wear (a similar study in Washington State put the percentage of this source at 20%). Given that the average age of cars on the road is about 11 years, this suggests that zero-copper brake pads imposed as of 2025 might reduce copper loads by only about 10% by 2036, nowhere near what is required for the TMDL compliance date. The original Board's comment is still relevant and unanswered.</p>	<p>"The RAA's approach of using zinc as a limiting pollutant, while anticipating copper reductions through Senate Bill 346 is an adequate approach to compliance with copper WQBELs. Therefore, no condition was included in the Executive Officer's approval letter to address this comment. The WMP Group has clarified its approach and estimates of copper reductions under Senate Bill 346 have been provided since issuance of comments on the draft WMP. Specifically, the Revised WMP provided detail on expected reductions in copper runoff under various implementation scenarios at TMDL compliance milestones (Section 4.3.2.2, Table 4-6, pg. 67)."</p>	
10	10	14		<p>The WMP assumes a significant reduction in copper based on the phase-out of copper in automotive brake pads, via approved legislation SB 346, to achieve the necessary copper load reductions. Given the combination of other copper sources identified in various LA TMDLs such as building materials, other vehicle wear, air deposition from fuel combustion and industrial facilities, and that SB 346 progressively phases out copper content in brakes of new cars (5% by weight until 2021, 0.5% by weight until 2028), additional structural BMPs may still be needed to reduce copper loads prior to entering receiving waters and eliminate copper exceedences of RWLs.</p>	<p>Section 3.3.2 reasons that the phase-out is ahead of schedule and that other copper reductions will be afforded by source controls for zinc. Section 4.3.2.2 also discusses the issue but with no changes in text between the Draft and Revised WMP. No analysis of other sources and their magnitudes, how the accelerated phase-out might affect copper concentrations and loadings, or how source controls for zinc will affect copper are provided. This issue is of significant concern because sources of zinc and copper are not necessarily coincident, and frequently are not. This comment has not been addressed.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>Trivial changes of wording between Section 4.3.2.2 (Revised) and 4.3.3 (Final), but they provide no substantive change or response to the original Board comment.</p>	<p>"Section 4 of the Final WMP was completely reformatted and expanded, including section 4.4.3 which includes a sensitivity analysis, included as Table 4-12 demonstrating that the RAA assumed 50% reduction, by 2028, in copper loads attributable to changing brake pad formulations, was conservative."</p>	<p>See prior response (the relevant section in the Final WMP is 4.4.3, Table 4-12, p. 100).</p>	<p>The Group has answered Board Staff's original comment in that it has provided additional information on their approach for copper.</p> <p>Staff agrees with the Petitioners that the original comment is still relevant--additional BMPs may be required to meet TMDL milestones. However, at this stage of implementation of both the WMP and SB 346, Staff sees the Group's approach as reasonable. The original comment noted that additional BMPs may be required, but it did not explicitly suggest a change in approach.</p>
15	9	15		<p>The draft WMP, including the RAA, excludes stormwater runoff from non-MS4 facilities within the WMA from the stormwater treatment target. In particular, industrial facilities that are permitted by the Water Boards under the Industrial General Permit or an individual stormwater permit were identified and subtracted from the treatment target. Regional Water Board Board recognizes that this was done with the assumption that these industrial facilities will eliminate their wastewater contribution to receiving water exceedences, as required by the respective NPDES permit. However, it is important that the Group's actions under its Industrial/Commercial Facilities Program--including tracking critical industrial sources, educating industrial facilities regarding BMP requirements, and inspecting industrial facilities--ensure that all industrial facilities are implementing BMPs as required.</p>	<p>The closest the WMP comes to responding to this comment is an added sentence in Section 3.1.1 (p. 35 of the Revised WMP) stating "The Industrial and Commercial Facilities Inspection programs will significantly benefit from the greater emphasis on annual progress reporting and also the tables identified in the Permit and specifying specific BMPs, source controls, MCMs, and watershed control measures that should be apparent during commercial and industrial inspections."</p> <p>The statement is vague and does not even name, let alone commit to, specific measures such as those mentioned in the Board's comment. This comment has not been addressed.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>No change.</p>			<p>The original comment highlighted what the Group must implement under its Industrial/Commercial Facilities Program. The cited actions are permit requirements. The comment however, did not suggest a change in approach in the Group's WMP as the Petitioners are inferring.</p>
		16	<p>Part VI.C.5.b.iv.(5) Reasonable Assurance Analysis - Categories 2 and 3 Pollutants</p>	<p>"The WMP did not model and pollutants in Categories 2 and 3. These pollutants or surrogates need to be included in the RAA, or supported justification for the use of the proposed limiting pollutants as surrogates for each Category 2 and Category 3 waterbody-pollutant combination."</p>	<p>There is no evidence that this comment was considered or addressed.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>No change.</p>	<p>See also #9</p>	<p>See Response #9</p>	
<p>RAA EVALUATION LETTER</p>										
		17	<p>(A.1. "General comments")</p>	<p>The LA County MS4 Permittees in the Los Angeles River Upper Reach 2 Watershed Management Area are subject to interim and final water quality-based effluent limitations pursuant to Attachment O, Part A "Los Angeles River Watershed Trash TMDL," Part B "Los Angeles River Nitrogen Compounds and Related Effects TMDL," Part C "Los Angeles River and Tributaries Metals TMDL," and Part D "Los Angeles River Watershed Bacteria TMDL." Table 1-5 on page 15 of the draft WMP should be updated to include the effective date for revisions to the Los Angeles River Nitrogen Compounds and Related Effects TMDL, which is August 7, 2014.</p>	<p>The table was unchanged from Draft to Revised WMP.</p>	<p>No additional requirement to address October 27, 2014 Board comment.</p>	<p>Table 1-5 was updated for the Final WMP.</p>		<p>"The revised WMP did not correct the error. However, during a subsequent meeting, Board staff directed the Group to correct Table 1-5 to reflect the correct effective date for the Los Angeles River Nitrogen Compounds and Related Effects TMDL."</p>	

18	(A.2. "General comments")	The draft WMP should be revised to include Category 3 waterbody-pollutant combinations based on the data that were already analyzed in the draft WMP. Pursuant to Section VI.C.5.a., the WMP should identify potential sources, strategies, control measures and BMPs to address Category 3 priority pollutants, as required. Category 3 WBTs can be revised once monitoring data have been collected, through the adaptive management process. The concentration-based WQBELs for metals listed on page 78 of the WMP are incorrect and should not be used to set allowable loads. The correct concentration-based WQBELs for metals, which can be used in lieu of calculating allowable loads during dry weather, are identified in Attachment O, Part C.2.c. The load-based WQBELs for metals applicable during wet weather, which are identified in Attachment O, Part C.2.d of the permit should be used to calculate the allowable load and required reduction for metals during wet weather conditions. In summary, allowable pollutant loadings should be calculated separately for wet and dry weather using the WQBELs listed in Attachment O, Parts C.2.c and C.2.d of the permit. Loads must be expressed as daily loads, consistent with the expression of the WQBELs. Table 4-4 should be revised to specify that the loads presented are daily loads.	The previously noted statement added to the Revised WMP, "It should be noted that the Category 3 pollutants overlap significantly with Category 1 or 2 pollutants and in some cases, such as fecal coliform and E. coli, all total nitrogen and nitrate, they are essentially the same pollutant" (p. 33 of the Revised WMP) is presumably intended to be responsive to this comment, but is not. The referenced table (Table 4-4) is identical in both Draft and Revised WMPs.	No additional requirement to address October 27, 2014 Board comment.	Updated table (Table 4-4) in the Final WMP presents daily loads, as requested.				
19	(A.3. "General comments")	Allowable loads for metals based on the required WQBELs and potential WERSO values for copper and lead should be presented clearly and separately in Section 4.3.1.3 of the WMP, since the copper WERs and recalculated lead values have not been approved by the Regional Water Board as of this time. If concentration-based WQBELs are selected to be used to calculate the allowable loads, and these allowable loads are different from the mass-based WQBELs listed in Attachment O, the WMP should provide a clear explanation on how the proposed concentration-based WQBELs and allowable loads were derived from the WQBELs in Attachment O.	The only change in the Revised WMP in this section was the addition of a sentence: "The observed or modeled daily flow volumes can be used to prorate concentration-based WQBELs to load-based WQBELs by multiplying the daily flow volumes with concentration-based WQBELs" (p. 82). This is not responsive.	Revise the revised draft WMP to present all model results of pollutant loads, allowable loads, target load reductions, and load reductions associated with control measures in units consistent with the respective TMDL (e.g., Los Angeles River Metals TMDL allowable loads should be given as daily loads not annual loads in Table 4-3). Each table in Section 4.0 must include units per time step (e.g., lbs/day) for the numeric values for clarity.	This section was substantively rewritten and improved.				
20	(B.1. "Modeling comments")	The model predicted loads presented in Table 4-3 for the baseline condition are not consistent with those results directly from model output (see Figures A and B, for example). These discrepancies could be due to the usage of the 90th percentile year for the predicted results of pollutant loads. Further, all model results of pollutant loads are presented in terms of lbs/year in Table 4-3 through Table 4-6. However, the results for the RAA should be presented in units consistent with the expression of each of the WQBELs in Attachment O of the MS4 Permit.	No change was made in the tables.		This section was substantively rewritten and improved.				
21	(B.2. "Modeling comments")	For the baseline condition, the model predicted runoff volume and the concentrations for copper, lead, zinc, nitrogen, and bacteria should also be presented in Table 4-3 for the wet weather condition. For cadmium, no model results are included in Table 4-3. An explanation is needed for the exclusion of cadmium from the modeling, or alternatively, supporting documentation/analysis to demonstrate that the model results for copper, lead and zinc do not adequately represent the baseline condition and required reduction for cadmium.	No changes were made with respect to Table 4-3 or the use of surrogates for cadmium.	No additional requirement to address October 27, 2014 Board comment.	The table of baseline loads (Table 4-3) in the Revised WMP, Table 4-5 in the Final WMP) has been revised to show daily wet-weather loads, but not the predicted runoff volume or concentrations. The sentence on page 73 of the Revised WMP that references this topic: "... total cadmium (copper, lead, and zinc will be used as surrogates)" has simply been eliminated in the Final WMP. No discussion of cadmium is present at all in the final Plan.			The Group discussed its use of copper, lead, and zinc as surrogates for cadmium with Regional Board staff. The use of a subset of pollutants that are proxies for other Category 1, 2 and 3 pollutants is a reasonable and necessary approach as the models identified for use in the permit were developed to model a subset of pollutants.	
22	(B.3. "Modeling comments")	The differences between baseline concentrations/loads and allowable concentrations/loads should be presented in a time series for each pollutant under long term continuous simulation and then as a summary of 90th percentile of the differences between pollutant concentrations/loads and allowable concentrations/loads for wet weather periods, in units consistent with the applicable WQBELs and Receiving Water Limitations (e.g., mass or number per day), instead of using the predicted results of selected year presented only as an annual reduction in load to represent for load reduction target. In addition, a detailed explanation should be provided of the calculations used to derive the target load reductions.	There is no evidence that this comment was considered or addressed.	No additional requirement to address October 27, 2014 Board comment.	This section was substantively rewritten and improved. Results with the desired outcome (i.e., simulated concentrations/loads vs. allowable concentrations/loads) are summarized, but the requested time series for each pollutant have not been provided as part of the WMP.	"Section 4 of the Final WMP was significantly revised and expanded to address many of the Board Staff identified comments, including the initial choice of pollutant load units and analysis periods in the draft WMP. Figures 5-1 to 5-6 were also revised to address comments on the pollutant load units and other requested changes in the RAA."	"Time series data were provided in model output files. Total BMP load reductions that exceed the target load reductions indicate that reasonable assurance (of meeting the permit limits) has been demonstrated for that pollutant for that drainage area. The tables in combination with the model output files adequately addressed Board staff's comment." "Section 4.3.1, Target Load Reductions, details how the Target Load Reductions were calculated. The Group provided model input and output files that allowed Board staff to verify the calculated Target Load Reductions. The Groups' explanation adequately addressed Board staff's comment."		
23	(B.4. "Modeling comments")	The report used a pollutant load-based approach to evaluate BMP performance and compliance with applicable WQBELs for wet weather conditions. However, the report should also provide predicted concentrations/loads and allowable concentrations/loads under the BMP scenarios. Additionally, Table 4-17 to Table 4-20 need to be revised to clarify the units for the values presented in each table. Finally, it appears that model output is only provided for final compliance deadlines. Model output should also be provided for phased BMP implementation to demonstrate that interim WQBELs for metals and bacteria will be met.	There is no evidence that this comment was considered or addressed.	No additional requirement to address October 27, 2014 Board comment.	This section was substantively rewritten and improved, but model outputs for bacteria and metals (Tables 20-23) still do not show any interim performance as originally requested by the Board comment, only end-of-day performance. Note that E. coli fails to meet the required reductions under the "Low (25th percentile)" condition.	"Section 4 of the Final WMP was significantly revised and expanded to address the comments. Figures 5-1 to 5-6 were further revised to address comments on pollutant load units and other requested changes in the RAA."	This statement is only partly responsive to Board's comments; analysis of Final WMP is still unaddressed.	Page 5 of the Los Angeles Water Board's Approval (with Conditions) clearly states that it will determine the Group's compliance with the WMP on the basis of the compliance actions and milestones included in the WMP, including the Group's control measure implementation schedule (see RB-AR6333). Changes to compliance actions and milestones listed in the WMP must go through an approval process, which is already outlined in the LA County MS4 Permit (see RB-AR711).	
24	(B.5. "Modeling comments")	The ID number for each of the 50 subwatersheds from the model input file should be provided and be shown in the simulation domain to present the geographic relationship of the subwatersheds within the watershed area that are simulated in the LSPC model.	There is no evidence that this comment was considered or addressed.	No additional requirement to address October 27, 2014 Board comment.	No change.	"The requested subwatershed ID numbers were provided, along with the Draft and Final RAA model input and outputs data files, to the Regional Board Staff."	"The Group provided the subwatershed ID numbers as well as submitted the model input and output files in response to Board staff's request."		
25	(B.6. "Modeling comments")	The flow, runoff volume and water quality (pollutant concentration and pollutant mass) time series output at the watershed outlet as well as for each modeled subbasin should be provided using the 90th percentile critical condition consistent with the expression of the WQBELs in Attachments N and O to estimate the baseline condition. In addition, per RAA Guidelines, the model output should include stormwater runoff volume and pollutant concentration/load at the outlet and for each modeled subbasin for each BMP scenario as well (see Table 5, Model Output for both Process-based BMP Models and Empirically-based BMP Models, pages 20-21 of the RAA Guidelines).	There is no evidence that this comment was considered or addressed.	No additional requirement to address October 27, 2014 Board comment.	This information may be provided in an appendix, but no such tabulation is provided in any draft of the WMP.	The subject subwatershed time series, flow, volume, and pollutant data were provided, as part of the Draft and Final RAA model input and outputs data files, to the Regional Board Staff."	"The Group submitted the model input and output files in response to Board staff's request. The time series output is contained within the submitted model files."	These data are not available for review.	The model input and output files are available as part of the Administrative Record prepared for this petition and are also available upon request from the Regional Board (see RB-AR1031).
26	(B.7. "Modeling comments")	The flow, runoff volume and water quality (pollutant concentration and pollutant mass) time series output at the watershed outlet as well as for each modeled subbasin should be provided using the 90th percentile critical condition consistent with the expression of the WQBELs in Attachments N and O to estimate the baseline condition. In addition, per RAA Guidelines, the model output should include stormwater runoff volume and pollutant concentration/load at the outlet and for each modeled subbasin for each BMP scenario as well (see Table 5, Model Output for both Process-based BMP Models and Empirically-based BMP Models, pages 20-21 of the RAA Guidelines).	Two paragraphs were added to the WMP in section 4.3 reasoning that the approved models are not applicable to dry weather. Yet the consultant who prepared the Lower San Gabriel River RAA developed methodology to simulate dry weather conditions and to develop dry-weather pollutant reduction targets.	No additional requirement to address October 27, 2014 Board comment.	The Final WMP omits the rationale of Section 4.3 of the Revised WMP ("no approved models are applicable") and replaces it with the following text (p. 73): "With the Permit requirement to eliminate non-exempted, non-stormwater discharges, there is no technical basis upon which to develop a credible quantitative dry-weather RAA and compliance can be assumed through demonstrated implementation of requirements and prohibitions." Thus, any analysis of reasonable assurance is deferred to other programs, although the WMP quotes the bacteria TMDL in observing that "dry weather urban runoff and stormwater conveyed by storm drains are the primary sources of elevated bacterial indicator densities to the Los Angeles River Watershed during dry- and wet-weather." (Final WMP, p. 30)	"Non-Stormwater (dry-weather) Discharge Control Measures are identified in Final WMP section 3.1.3 on page 39. Despite receiving runoff from over 4 square miles of the LAR LRZ WMA, and an approximately 120 square mile tributary watershed, dry-weather flows are typically absent from the Rio Hondo Reach 1."	"Generally, modeling of non-stormwater discharges is not conducted due to uncertainties in predicting dry-weather runoff volume, which is driven by variable and unpredictable human activities rather than climatic factors. As such, dry weather compliance strategies are generally more conceptual. The Final WMP includes a new section 3.1.5.3 and revisions to Table 1-6, which identify steps and dates for investigating outlier outfalls as required by the condition in the approval letter (pg. 41). The dry weather RAA approach is appropriate."	The new referenced Section 3.1.5.3 is limited to dry-weather bacteria sources. Other elements of the original comment have not been substantively addressed.	The Petitioners partially cite pages 26-27 of the Staff Response to Petitioners' Detailed Technical Comments in its Memorandum of Points and Authorities and Exhibit D. Staff's full comment (see RB-AR1035 to RB-AR1036) is: "The models identified in the Los Angeles County MS4 Permit for use in conducting Reasonable Assurance Analysis were selected because they can represent rainfall and runoff processes of urban and natural watershed systems. The models were designed to model rain events and the resulting pollutant loads based on predictable rainfall-runoff relationships. While several Groups used the models to strategically plan dry weather compliance, they did so in a novel manner by modeling irrigation flow as a simulated rain event. This approach was taken by watershed groups where the Permittees determined that irrigation flow may be a significant source of dry weather pollutant loading in their watershed. Generally, modeling of non-stormwater discharges is not conducted due to uncertainties in predicting dry-weather runoff volume, which is driven by variable and unpredictable human activities rather than climatic factors. As such, dry weather compliance strategies are generally more conceptual, targeting reduction in non-stormwater discharges through implementation of illicit discharge elimination programs and BMPs for stormwater runoff that can have the added benefit of addressing dry-weather runoff as well. Section 4.3, Modeling Process, of the revised WMP states in part, "[a]lthough model simulations for dry weather are not included, dry weather compliance is demonstrated by the Los Angeles River Bacteria TMDL Load Reduction study, Los Angeles River Metals TMDL, CWP Annual Reports, and will continue to be assessed through CWP implementation, particularly dry-weather receiving water monitoring and non-stormwater outfall screening, source assessments, and monitoring" (pg. 75). The approval letter also included a condition, requiring the Group to include reference to the LA River Bacteria TMDL dry-weather load reduction strategy (LRS), submitted by the Group in December 2014, and the specific steps and dates for investigating outlier outfalls as set forth in the LRS. The Final WMP includes a new section 3.1.5.3 and revisions to Table 1-6, which identify steps and dates for investigating outlier outfalls as required by the condition in the approval letter (pg. 41). The dry weather RAA approach is appropriate."
27	(B.8. "Modeling comments")	The report did not describe how the model was calibrated, including calibration results compared to calibration criteria in Table 3.0 of the RAA Guidelines, and no historical hydrology and water quality monitoring data were used for comparison with the model results for the baseline prediction. According to Part G, pages 12-13 of the RAA Guidelines, model calibration is necessary to ensure that the model can properly assess all the variables and conditions in a watershed system.	A new section (4.5) was added to the Revised WMP, being a brief statement with an unusual future tense to the referenced activities: "For the RAA hydrologic series of 1989 to 2011, daily baseline concentrations and loads will be determined from the 90th percentile. The runoff volumes from the storm events will first be found, then dry loads less than a tenth of an inch will be removed. From there, the load days from the 90th percentile will be retrieved." (p. 103) This suggests that no change was made in response to this comment.	Section 4.5, Modeling Calibration, of the revised draft WMP discusses a comparison of SBPAT and LSPC runoff volumes "to show the difference between simulated and observed values to ensure the model properly assess conditions and variables." Provide this comparison of SBPAT and LSPC runoff volumes as an appendix or subsection to the model calibration section.	Section 4.5 Modeling Calibration was deleted in its entirety in the Final WMP. Calibration is now discussed in a new section 4.1.3, The RAA Model Calibration, wherein it is made clear that no calibration of the current model has been conducted in the LAR SRZ watershed using data from current conditions. All calibration information presented in the Final WMP, address some of the broader hydrology and pollutant modeling and calibration efforts, to which LSPC and SBPAT were subjected and evaluated." (p. 75). Limited calibration was presented, all conducted by others over one decade in the past. Without clear, convincing justification for the relevance and continued applicability of these results to the watershed, the model-based RAA cannot provide "reasonable assurance" of any outcome.				This comment has been previously raised and addressed, and is further responded to in the main response document.
28	(B.9. "Modeling comments")	The identification of the 90th percentile years in Table 4-2 needs to be supported by presenting historical hydrological data to demonstrate the selected critical period will capture the variability of rainfall and storm sizes/conditions. The input rainfall should be also presented in the report along with the historical precipitation frequency analysis for wet days and rainfall depth.	The presentation does not demonstrate that the choice of critical years given in Table 4-2 is correct. The analysis and graphing are not for precipitation frequency, as requested by the comment, but flow rate frequency. The addition to the WMP is thus unresponsive.	No additional requirement to address October 27, 2014 Board comment.	This approach was (properly) abandoned in the Final WMP.	"Section 4 of the Final WMP was significantly revised and expanded to address several of the Regional Board and Petitioner comments. Table 4-1 and Figures 4-15 and 4-16 in particular address this comment."	"The final WMP was revised to include Table 4-1, which lists the annual rainfall depth, for each year, for the period of 1989 to 2011. The comment was appropriately addressed."		

CONDITIONAL APPROVAL LETTER											
		29				Remove the following language in Section 1.3.1.1. of the revised draft WMP (p. 15): "The Cities are reserving all of their rights to subsequently assert that the identified BMPs need not be implemented, on the grounds that they are not technically or economically feasible. In other words, that the BMPs are impracticable and contrary to the MEP standard, and that it is not possible to provide the reasonable assurances required under the Permit in a manner that is consistent with the MEP standard, if at all. The Cities agree that it is not possible to provide the reasonable assurances required under the Permit in a manner that is consistent with the MEP standard."	The offending sentences were removed in the Final WMP. They were replaced with the following "Nothing in this WMP shall affect the administrative petitions of those Cities, nor shall anything in this WMP constitute a waiver of any Permittee positions or rights therein." (p. 15)				
		30				Reference the Los Angeles River Bacteria TMDL LRS, which was submitted by the LAR UR2 WMG in December 2014, in Section 3.1.5 of the revised draft WMP and include specific steps and dates for their achievement to be taken to investigate outlier outfalls consistent with the general approach of the LRS.	A new Section 3.1.5.3 Los Angeles River Bacteria TMDL Implementation Plans was added to the Final WMP (p. 41) that notes the December 2014 submittal and commits to the "investigation" of 4 outfalls at 6-month intervals beginning in September 2015.				
		31				Delete the reference to "Potential" and "Proposed" in Table 3-8 and revise table to only include specific commitments to non-structural BMP enhanced implementation actions. Indicate each Permittee's specific commitment(s) to each action in Table 3-8 "Potential Non-Structural BMP Enhanced Implementation Efforts," since these actions are the basis for the 5% load reduction from baseline.	The offending words have been removed, and (generally) specific implementation dates for specific actions/permittees have been added. For two permittees (Bell and Maywood), several actions have "Fiscal Constraints" in the space otherwise reserved for dates.				
		32				In Table 5-1 of the revised draft WMP, "Tentative Control Measure Implementation Schedule," delete all instances of the word "tentative." If you prefer, you can replace the word "tentative" with "approved" or "current." In the last sentence of the second paragraph of Section 5.1, change the sentence "The WMP, including the schedule aspect, will be updated through the adaptive management process, therefore the schedule identified is always tentative." to "The WMP, including the schedule aspect, will be updated through the adaptive management process; to that extent, the schedule identified is tentative unless the schedule is associated with TMDL provisions. However..."	The word "Current" has been substituted, along with the insertion of "Final" (in quotes) to read "Current Control Measure 'Final' Implementation Dates". The requested phrase has been substituted with the minor modification: "the implementation schedules identified are tentative unless determined as a date certain associated with specific TMDL provisions" (instead of the requested "...unless the schedule is associated with TMDL provisions"). Note, however, that on the same page the Final WMP continues to read "The dates identified in this WMP Plan are subject to the procurement of grants or other financing support commensurate with the existing and future fiduciary responsibilities of the Permittees. They may furthermore be adjusted based on evolving information developed through the iterative adaptive management process identified in the 2012 MSA Permit or similar Parts within future MSA Permits." In addition, most of the implementation actions in Table 5-1 do not occur or are not complete until 2028 or later (and none prior to 2016). Thus, despite the apparent intent of this Board comment and the specific wording change, there remains no commitment to meeting these (rather unambitious) final milestones, and no identification of actions to meet interim milestones.				<p>The Group's statement that the implementation schedules identified are "tentative" in this context are based on the Group's understanding of the Adaptive Management Process and is ultimately immaterial with respect to how the Los Angeles Water Board views the Group's Watershed Management Program deadlines—i.e. the Los Angeles Water Board treats the Watershed Management Program Implementation Schedule contained in the Final Watershed Management Program as the schedule the Group must follow unless an extension of the schedule is approved in accordance with the LA County MSA Permit.</p> <p>If the Group is not approved for any extension and the Group fails to follow its implementation schedule then it will not be able to use the alternative compliance path for achieving receiving water limitations that is provided through Watershed Management Program implementation.</p> <p>The Los Angeles Water Board explicitly expressed how it will determine Watershed Management Program compliance to the Los Angeles River Upper Reach 2 Group in its April 28, 2015 Approval (with Conditions) Letter (pg. 5) [see RB-AR6333].</p> <p>Furthermore, it should be emphasized that under the MSA Permit, the Group cannot request an extension of final compliance deadlines established in a TMDL as stated in Section VI.C.6.a of the Permit [see RB-AR711].</p> <p>"Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.ii., with the exception of those final compliance deadlines established in a TMDL. Permittees shall provide requests in writing at least 90 days prior to the deadline and shall include in the request the justification for the extension. Extensions must be affirmatively approved by the Regional Water Board Executive Officer, notwithstanding Part VI.C.8.a.ii."</p> <p>For these reasons, the cited issue is not a specific issue of the Watershed Management Program as approved. The Group is ultimately relying on provisions of the LA County MSA Permit to provide scheduling flexibility, however these permit provisions themselves are not automatic, but rather have defined processes that must be followed.</p>